

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GOOGLE, INC. * Civil Docket No.
* 2:11-CV-229
VS. * Marshall, Texas
*
* January 22, 2014
BENEFICIAL INNOVATIONS, INC. * 8:40 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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12
13 *****

14 P R O C E E D I N G S

15
16 (Jury out.)

17 COURT SECURITY OFFICER: All rise.

18 THE COURT: Be seated, please.

19 All right. Is the Plaintiff prepared to
20 read into the record a rendition of those documents from
21 the list of preadmitted exhibits used and published
22 before the jury as a part of yesterday's portion of the
23 trial?

24 MS. HUBER: Yes, Your Honor.

25 THE COURT: Please proceed to the podium

1 and do so, Counsel.

2 MS. HUBER: Exhibit 1, 2, 3, 4, 8, 9, 12,
3 22, 23, 29, 30, 31, 32, 37, 38, 43, 44, 48, 49, 57, 62,
4 114, 115.

5 THE COURT: For purposes of clarity, I
6 assume those are all Plaintiff's exhibit numbers.

7 MS. HUBER: Yes, Your Honor, that's
8 correct.

9 THE COURT: All right. Does the
10 Defendant have any objection to that rendition by the
11 Plaintiff?

12 MR. RAMBIN: Good morning, Your Honor.
13 No, we do not.

14 THE COURT: Does the Defendant have a
15 similar list to read into the record?

16 MR. RAMBIN: Yes, we do, Your Honor. The
17 only additional exhibits offered by the Defendants were
18 Defendant's Exhibits 501 and 517.

19 THE COURT: Does the Plaintiff have any
20 objection to that rendition by the Defendant?

21 MS. HUBER: No, Your Honor.

22 THE COURT: All right. Thank you,
23 Counsel.

24 Also before we bring the jury in and
25 continue with the evidence, at the close of the day

1 yesterday, Counsel raised an issue regarding Defendant's
2 assertion that Plaintiff was taking advantage of a
3 surprise with regard to undisclosed theories of harm.
4 And as you'll recall, I directed each side to file a
5 short position paper on the same overnight, which I have
6 read and reviewed. So I'm prepared to give you a ruling
7 and some direction on that issue.

8 With regard to the evidence adduced
9 through Mr. Trinh that Google employees have spent many
10 hours of employee time dealing with Beneficial's
11 lawsuit, I sustained that objection at the bench, and I
12 am precluding the Plaintiff from offering any similar or
13 supporting evidence of that nature going forward. I do
14 find that that was not disclosed, and I do find that it
15 was properly objected to, brought to the Court's
16 attention and dealt with during the trial yesterday.

17 With regard to whether Google has lost
18 any customers as a result of Beneficial's conduct, that
19 was brought into the trial through the cross-examination
20 of Mr. Bellack yesterday. The Court finds that the
21 parties are in agreement. That is a separate issue from
22 time devoted to dealing with the lawsuit as I've
23 addressed.

24 And given that second and separate issue,
25 the loss of any customers by Google, the Court finds

1 that -- two things: That given that is separate, the
2 Defendant opened the door to it; and secondly, when the
3 Plaintiff revisited it, the Plaintiff failed to timely
4 object. Therefore, I'm going to overrule Defendant's
5 objection with regard to the evidence relating to
6 Google's loss of a customer.

7 I do assume, Counsel, that those issues
8 have been covered, and we will not be going into them
9 further. But that's -- that's my ruling with regard to
10 those two matters.

11 Any questions?

12 MR. JONES: None from the Plaintiff, Your
13 Honor.

14 MR. ADAMS: No questions, Your Honor.

15 THE COURT: All right. I don't see our
16 witness. Is he available to return to the witness
17 stand?

18 MS. ANDERSON: Yes, Your Honor. He is
19 here waiting outside.

20 THE COURT: All right. Let's get him and
21 get him to the witness stand.

22 And, Mr. Rosen, return to the podium to
23 continue your examination.

24 When they're in place, Mr. McAteer,
25 please bring in the jury.

1 COURT SECURITY OFFICER: Yes, sir.

2 THE COURT: If you'll come forward,
3 Mr. Bellack, and return to the witness chair.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: I'll remind you that you
6 remain under oath.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: All right. Mr. McAteer, if
9 you'll bring in the jury.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury in.)

13 THE COURT: Welcome back, Members of the
14 Jury. Please be seated.

15 Counsel, please be seated as well.

16 We'll continue with the cross-examination
17 by the Defendant of Mr. Bellack.

18 You may proceed, Mr. Rosen.

19 JONATHAN BELLACK, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

20 CROSS-EXAMINATION (CONTINUED)

21 BY MR. ROSEN:

22 Q. Good morning, Mr. Bellack.

23 A. Good morning.

24 Q. Yesterday afternoon we were talking about the
25 DoubleClick ad-serving process. Do you recall that?

1 A. Yes.

2 Q. I just want to close out that, and I want to
3 show you Exhibit 49. And 49, this is a document that
4 you were shown yesterday in your examination, I believe.
5 And this is part of the -- sort of the documents that
6 are provided to Google's customers to explain to them
7 how DFP, DoubleClick for Publishers, works, correct?

8 A. Yes, sir.

9 Q. And this is part of the getting-started guide
10 that you talked about, right?

11 A. Yes, sir.

12 Q. And you can see -- and I've highlighted it
13 here -- explaining ad tags, and it says: When a page
14 explaining an ad tag is rendered, the following sequence
15 of events occur. And it lists three or four things.

16 Do you see that?

17 A. Yes, sir.

18 Q. When the document makes reference to a page
19 containing an ad tag is rendered, that goes back to what
20 we talked about yesterday, meaning when the HTML
21 document that's transmitted from the website to the user
22 is rendered, right?

23 A. Yes, sir.

24 Q. Okay. All right. So I want to switch gears a
25 little bit. So we've talked about the ad-serving

1 process, the manner in which DoubleClick serves ads on
2 these websites.

3 Another thing DoubleClick does is it assists
4 in the process of -- of just creating the ad tags
5 themselves, right?

6 A. Yes, sir.

7 Q. Okay. So -- and what DoubleClick does in that
8 regard is it instructs its customers so they can make
9 their own ad tags, right? That's one thing?

10 A. So that they can make additional DoubleClick
11 ad tags according to the formats that we specified.

12 Q. Right. So -- so the first thing you'll do is
13 you'll provide them some -- I think you used the word
14 syntax. You'll provide them some syntax, which is
15 essentially sample ad code, right?

16 A. Yes, sir.

17 Q. And then they can build off that sample ad
18 code and start to develop their own ad code; is that
19 fair to say?

20 A. Yes, sir, within the bounds of what they're
21 allowed to change.

22 Q. And ad code -- an ad tag, that's just a
23 snippet of code, right?

24 A. In -- in -- essentially, yes.

25 Q. Okay. And there's different kinds of codes --

1 different types of tags besides the ad tags, right?

2 A. Yes, sir.

3 Q. And they're all just snippets of code --

4 A. Yes, sir.

5 Q. -- that do -- that do different things?

6 A. Yes, sir.

7 Q. So an ad tag is a snippet of code that is
8 involved in the ad process, right?

9 A. Yes, sir.

10 Q. Okay. Google didn't invent tags, did it?

11 A. No, sir.

12 Q. Didn't invent ad tags, did it?

13 A. No, sir.

14 Q. And you -- you talked yesterday about other
15 third-party ad servers that are out there.

16 A. Yes, sir.

17 Q. They use ad tags also, right?

18 A. Yes, sir.

19 Q. And -- and sometimes a website serves its own
20 ads, right?

21 A. Yes, sir.

22 Q. And when a website serves its own ads without
23 using DoubleClick or any of these other companies, they
24 also use ad tags?

25 A. Yes, sir.

1 Q. Now, the ad tag, and you talked about this a
2 little bit yesterday, the ad tag contains different
3 variables that you can put in there, right?

4 A. Yes, sir.

5 Q. And you showed us an example with the
6 different numbers and letters. And -- and as you change
7 those variables, it changes the ad, right?

8 A. It changes the options for what ad could serve
9 on that page.

10 Q. Right. So you can change a variable that will
11 move. Maybe now the ad's going to show on the top
12 rather than the bottom, that sort of thing, right?

13 A. Yes, sir.

14 Q. You can change a variable so the ad will be
15 smaller versus larger, right?

16 A. Yes, sir.

17 Q. And one of the variables you can change is
18 whether the ad is going to appear on the display next to
19 the service or as a pop-up ad, right?

20 A. I'm sorry. Could you repeat that question?

21 Q. Yeah. One -- so one of these variables that
22 you can add into these ad tags is to make it pop up like
23 a pop-up ad.

24 A. Technically speaking, the ad tag itself
25 doesn't cause it to be a pop-up ad. The ad tag says, as

1 well -- at least in DFP, it says, as well as it being
2 possible to show an ad on the page, if there is a pop-up
3 ad available, that is also allowed to serve.

4 Q. All right. So let's look at Exhibit 46, which
5 I believe -- I -- I don't believe you saw this
6 yesterday. So I'll ask you to take a look at this.

7 And Exhibit 46, this is also something from
8 the documents that Google provides to its...

9 A. Okay. I don't -- just -- I -- looks like I
10 don't have it in my book. Is that okay?

11 Q. Well, I can get you a copy, but I can also put
12 it up here.

13 A. That's fine.

14 THE COURT: Is it not on the monitor in
15 front of you?

16 THE WITNESS: Yeah, it is on the monitor
17 in front of me.

18 THE COURT: Okay. Let's continue.

19 MR. ROSEN: Thank you, Your Honor.

20 Q. (By Mr. Rosen) So this is a document that
21 describes to Google customers how to show a pop-up ad,
22 right?

23 A. Yes, sir.

24 Q. And it explains that in order for these
25 creatives to serve an ad tag, the tag needs to include

1 the reserve key value DCOPT=IST, right?

2 A. Yes, sir.

3 Q. So that's a piece of code that you would --
4 you would write those letters, and you'd insert that
5 into the ad tag, right?

6 A. Yes, sir.

7 Q. And that's what would let the ad tag know that
8 there was a pop-up ad.

9 A. Yes. But technically speaking, as it says,
10 that that is letting -- it is having that ad tag let the
11 server know that a pop-up ad is allowed to serve.

12 Q. Correct. Now, Google -- well, let me take a
13 step back.

14 We talked yesterday about the process of
15 creating this HTML document, about how you use these
16 programmatic elements to combine service-related
17 information with ad-related information.

18 Do you recall discussing that yesterday?

19 A. Yes, sir.

20 Q. Google does not insert the ad tag into this
21 HTML document, does it?

22 A. No, sir.

23 Q. That's the job of the website.

24 A. Yes, sir.

25 Q. Google also does not provide the software

1 that's used to combine the service-related information
2 with the advertising-related information, correct?

3 A. In the case of DFP, no, sir. In the case of
4 DE, there are some technologies that could be involved
5 in that.

6 Q. Okay. But as a general matter in the case of
7 DoubleClick for Publishers, which is the system where
8 Google acts as the ad server, Google does not provide
9 that software that combines the service-related
10 information with the ad-related information, correct?

11 A. No, sir.

12 Q. No, sir, meaning Google -- Google doesn't
13 provide --

14 A. Google does not, yes. I'm sorry.

15 Q. Now -- so the user's device reads that ad tag,
16 and it sends a -- transmits a message to DoubleClick, to
17 the DoubleClick servers to display an ad, right?

18 A. Yes, sir.

19 Q. And in response to that transmission to
20 DoubleClick, the DoubleClick servers are going to return
21 something to the user's device, right?

22 A. Yes, sir.

23 Q. They're going to return some -- some data,
24 right?

25 A. Yes, sir.

1 Q. But the data that DoubleClick returns to the
2 user's device, that's data that is going to result in
3 the display of the ad, correct?

4 A. Yes, sir.

5 Q. It is not data that's going to result in the
6 display of the service that the user has requested,
7 correct?

8 A. No, sir.

9 Q. In other words -- I keep asking double
10 negative questions.

11 A. Yeah. Sorry.

12 Q. Does the data that DoubleClick sends to the
13 user's device to display to the ad also result in the
14 service being displayed?

15 A. It does not.

16 Q. DoubleClick -- so we talked yesterday about
17 cookies, right? And -- and some websites put cookies on
18 their -- transmits cookies to the user's device, right?

19 A. Yes, sir.

20 Q. DoubleClick does not read those cookies,
21 right?

22 A. No, sir.

23 Q. Does DoubleClick read those --

24 A. Sorry.

25 Q. No. It's my fault, a hundred percent my

1 fault.

2 Does DoubleClick read those cookies?

3 A. No, sir.

4 Q. Does DoubleClick -- DoubleClick have access to
5 the publishers, these websites' systems?

6 A. Not directly, no.

7 Q. In fact, for the websites that use
8 DoubleClick, there's no interface between Google's
9 servers and the website's servers, correct?

10 A. There are none.

11 Q. Now, you also talked yesterday about how
12 DoubleClick itself will sometimes put cookies on the
13 user's device, right?

14 A. Yes.

15 Q. Now, when DoubleClick puts a cookie on the
16 user's device, the only use for that cookie is to
17 improve advertising, correct?

18 A. Yes, sir.

19 Q. All right. I'm going to --

20 MR. ROSEN: Jan, I'm going to try
21 something. I may not -- I may not succeed. Let me
22 figure out how to use this. I'm sorry, Ms. Lockhart.

23 Q. (By Mr. Rosen) All right. Can you -- can you
24 see that?

25 A. Yes, sir.

1 Q. All right. So this is the -- the picture of
2 the website that you talked about yesterday, right?

3 A. Yes, sir.

4 Q. Okay. So on this Country Weekly site, you
5 know, we can see the -- up there it talks about the
6 January 13th George Strait concert, and particular --
7 presumably that's a link that you can click on, right?

8 A. Yes, sir.

9 Q. So you click on that link, and you'd get more
10 information about the George Strait concert, right?

11 A. Yes, sir.

12 Q. So that's the service that's being provided by
13 this website in that instance, right?

14 A. Yes, sir.

15 Q. Now, I guess the bottom right, that redeem
16 your card now, that's an ad provided by DoubleClick,
17 right?

18 A. Served by DFP, yes.

19 Q. Okay. So this is the ad served by DFP, and
20 this is the -- the service requested by the user, right?

21 A. Yes.

22 Q. And -- and the way -- and I think -- I think
23 you said this yesterday, early on in your testimony
24 yesterday, the way -- what DFP does, what it -- sort of
25 the reason to be with respect to serving ads on websites

1 is to serve an ad alongside the service, right?

2 A. Yes, sir.

3 Q. But DFP does not generally serve an ad on top
4 of the service, does it?

5 A. Not generally, but sometimes.

6 Q. But as a general rule, the point is the
7 website wants its content to be seen, right?

8 A. Yes. And I -- I apologize. The reason I'm --
9 I'm not sure I would say generally is that there's a
10 type of ad that's becoming a little more common called
11 an interstitial where the user has to sort of see the ad
12 or click something to close it before they do see the
13 content.

14 So it's not incredibly common, but I don't
15 know if I'd say, as a rule, that never happens.

16 Q. Okay. But you'll agree with me, just as a
17 general matter, on an average website like Country
18 Weekly or -- you listed a bunch of websites yesterday --
19 the Viacom websites, on those websites, you have the
20 content on the page, and then alongside the content, you
21 have the ad. They don't -- they don't -- they're not on
22 top of each other. Half the ad doesn't cover the
23 content, right?

24 A. Not usually, no.

25 MR. ROSEN: So, Ms. Lockhart, can I

1 switch back now?

2 Thank you.

3 Q. (By Mr. Rosen) So let me show you -- so this
4 is -- I -- I want to -- we looked a little bit at the
5 '702 patent yesterday. Now I want to show you a little
6 more of the '943 patent.

7 And I'm just going to high -- this is Claim 1
8 of the '943 patent. I'm just going to highlight one
9 part of it here.

10 And one of these elements of the '943 patent
11 is: Overlapping with a display of said one of the
12 display presentations, P1.

13 Do you see that?

14 A. Yes, sir.

15 Q. So if I had the -- that screenshot on the
16 board, so that that George Strait article, that would
17 be, you know, P1. That's a presentation, Presentation
18 No. 1.

19 A. Okay.

20 Q. Overlapping with a display of said one of the
21 said display presentations, P1, at the user node is a
22 display of a first one or more advertising presentations
23 for providing information relating to one or more of a
24 product or service.

25 So if I had that screenshot on the board, we'd

1 see that iTunes article. So we'd have overlapping with
2 a display of the George Strait article is a display of
3 an advertising for iTunes, okay?

4 A. Okay.

5 Q. Now -- now, I want to show you how the Court
6 construed the term overlapping. The Court construed the
7 term overlapping -- and I apologize; this is sort of a
8 mess.

9 You can see the Court construed the term
10 overlapping to be extending over or past and covering
11 part of. So using this definition of overlapping, the
12 general way that DoubleClick works is the ad does not
13 overlap the service in the way that this term has been
14 construed, correct?

15 A. No, not by this definition.

16 Q. All right. So by this definition, the ad does
17 not overlap the service, right?

18 A. No, it does not.

19 Q. I want to switch gears a little bit, and I
20 want to talk to you about the instruction and
21 encouragement that you give to your customers in the use
22 of DoubleClick.

23 First of all, we -- we just -- I just showed
24 you the '943 patent. You'll agree with me that Google
25 never even became aware of the '943 patent until it got

1 sued by Beneficial, right?

2 A. Yes, sir.

3 Q. In other words, before -- before Google was
4 sued and saw that they're being sued of infringement of
5 the '943 patent, they never heard of the '943 patent?

6 A. That is my understanding. Yes.

7 Q. And the same is true for the '702 patent.
8 Before Google got sued for infringing the '702 patent,
9 they never even heard of the '702 patent?

10 A. I believe so.

11 Q. Now, you testified, you know, for a while
12 yesterday about all the -- the -- I think you identified
13 four different types of training that you do for -- for
14 your users and your customers, and that's all training
15 to teach your customers how to use DoubleClick, right?

16 A. How to use DoubleClick and how to set up the
17 ad tags required to call DoubleClick.

18 Q. All right. So those are the two primary
19 focuses of the trainings: How to use DoubleClick. And
20 when you say how to use DoubleClick, you're talking
21 about how to use all the software and to input all the
22 information into the computer so that DoubleClick knows
23 what kinds of ads you want to serve and what advertisers
24 you have, that sort of information, right?

25 A. Yes, sir.

1 Q. So that's part one.

2 And then part two is to teach the customers
3 how to use the ad tags themselves?

4 A. Yes, sir.

5 Q. And Google provides -- you went into it
6 yesterday -- Google provides documentation on how to do
7 this, right?

8 A. Yes, sir.

9 Q. By the way, I just want to -- as an aside,
10 you've heard of Conde Nast?

11 A. Yes, sir.

12 Q. Conde Nast is a customer of DoubleClick,
13 right?

14 A. Yes, they are.

15 Q. And Conde Nast is a division of Advance
16 Publications, right?

17 A. I'm not actually sure about that.

18 Q. All right. Let me just show you Exhibit 520.
19 And if you have it in your book, it may just be easier
20 to do that, because this may turn -- I thought this
21 might happen.

22 A. Okay.

23 Q. But Exhibit 520, that's a spreadsheet that you
24 prepared of various customers of --

25 A. Yes.

1 Q. -- of DoubleClick, right?

2 A. Yes.

3 Q. And you see there, does this refresh your
4 recollection that if you look under the Advance
5 Publications listing, one of the portions or one of the
6 parts of Advance Publications is Conde Nast?

7 A. Yes, sir.

8 Q. Now, in all of this teaching of customers how
9 to use DoubleClick -- take a step back.

10 One thing cookies can be used for that you're
11 aware of is to identify a user when a user returns to a
12 website, right?

13 A. Yes, sir.

14 Q. So, for example, if I sign in on a website and
15 register, when I close down my browser and come back the
16 next day, if I go to that website, it may say, you know,
17 hi, David or welcome, David. That's because of an
18 identification cookie, right?

19 A. Yes, sir.

20 Q. When Google teaches and instructs its
21 customers on how to use DoubleClick, Google does not
22 encourage its customers to transmit identification
23 cookies to its users, does it?

24 A. Not as part of that training, no.

25 Q. Well, let me be more specific then. We've

1 been talking in this case about these five Defendants
2 that Google filed this lawsuit on behalf of. Google did
3 not encourage or instruct any of these five Defendants
4 to transmit identification cookies to their users, did
5 they?

6 A. I could not say for sure, because I have
7 spoken publicly several times about the importance of
8 establishing an ongoing relationship with users that
9 tend to involve log-ins, and some of these customers may
10 have been in the audience.

11 Q. Now, other than that very general statement
12 you may have made in that, you don't teach -- in your
13 documentation, you don't teach websites to transmit
14 identification cookies to users, do you?

15 A. No, we do not.

16 Q. And -- and focusing on these five Defendants
17 that are -- we're talking about in this case, Google has
18 never encouraged or instructed those Defendants to set
19 up a system where users register on their website,
20 right?

21 A. We -- we haven't instructed them, but we may
22 have encouraged them through the -- the kind of speaking
23 that I mentioned.

24 MR. ROSEN: I'd like to read from --
25 actually play a clip from the witness' depo. Your

1 Honor, I'll just read it to shorten the clip.

2 Q. (By Mr. Rosen) From Page 174, Lines 2 through
3 5:

4 QUESTION: -- you recall I took your
5 deposition, Mr. Bellack, some time ago, right?

6 A. Yes, sir.

7 Q. And when you sat for that deposition, you
8 understood that you were under oath, right?

9 A. Yes, sir.

10 Q. And as a matter of fact, when you attended
11 that deposition, you weren't -- you appeared as a
12 representative of Google, right?

13 A. Yes, sir.

14 Q. In other words, we asked Google -- we didn't
15 ask Google to please produce Mr. Bellack for deposition.
16 We said: Google, please produce a witness that can
17 answer questions for us on specific categories of
18 testimony, right?

19 A. Yes, sir.

20 Q. And you were the person that Google delivered
21 to us, correct?

22 A. Yes, sir.

23 Q. Okay. And in -- is it correct that in that
24 deposition, I asked you the following question and you
25 gave the following answer?

1 A. Yes, sir.

2 Q. QUESTION: And you did not -- you do not
3 instruct publishers to require -- to set up a
4 registration system for users to register, correct?

5 ANSWER: No, we do not.

6 A. Yes, sir.

7 Q. And that was your testimony in deposition,
8 right?

9 A. Yes, it was.

10 Q. And, in fact, for any of the Defendants, those
11 five parties that are at issue in this case, you -- can
12 you identify for us any of the documents that were
13 provided to those customers in order to teach them how
14 to use DoubleClick?

15 A. Not specifically, no.

16 Q. In your examination yesterday, you were shown
17 Exhibit 115, which is this DART Webmaster's Guide.

18 Do you recall that?

19 A. Yes, sir.

20 Q. And this is the manual that are for people at
21 the website responsible for inserting ad tags into this
22 combined file that we've talked about, right?

23 A. Yes, sir.

24 Q. And I think you even commented that this
25 document is more than a hundred pages, right?

1 A. Yes, sir.

2 Q. It's very comprehensive, right?

3 A. Yes, sir.

4 Q. And nowhere in that manual, Exhibit 115,
5 Mr. Bellack, does Google teach its customers how to use
6 cookies to identify a user, correct?

7 A. No, sir.

8 Q. Is there anything in that manual that teaches
9 customers to use cookies to identify a user?

10 A. No, there is not.

11 Q. Is there anything in that manual that teaches
12 customers that they need to have a store for storing
13 user identification information?

14 A. I'm sorry. Could you -- could you rephrase
15 that question?

16 Q. Is there anything in that manual that teaches
17 customers that they need to set up a store for storing
18 user identification information?

19 A. Are you asking did we tell them that it is
20 required anywhere?

21 Q. Yes. Anywhere in that manual.

22 A. No, we do not say it's required.

23 Q. And you also saw Exhibit 114, which was an
24 administrator's guide for DE?

25 A. Yes.

1 Q. Which was DoubleClick Enterprise, correct?

2 A. Yes, sir.

3 Q. And this is the manual for website
4 administrators responsible for -- for managing
5 DoubleClick Enterprise, right?

6 A. Yes, sir.

7 Q. And this is more than -- this is close to a
8 hundred pages, right?

9 A. Yes, sir.

10 Q. And, again, is there anything in this manual
11 that teaches customers to use cookies to identify a user
12 or provide access to a service?

13 A. To be honest, I have not read this entire
14 manual end-to-end, so I couldn't say.

15 Q. But as you sit here today, is there anything
16 in that manual that you can identify that provides that?

17 A. I cannot identify, no.

18 Q. You will agree, though, that both of these
19 documents are -- were intended to be comprehensive
20 manuals to teach your customers, whether it's the
21 Webmaster or other people within the website, how to use
22 the DoubleClick products?

23 A. For the particular parts of DoubleClick that
24 these documents were focused on, yes.

25 Q. You mentioned yesterday ALM no longer being a

1 customer.

2 A. Yes, sir.

3 Q. You -- you didn't -- as part of your
4 testimony, you didn't show us any documents on that
5 subject, correct?

6 A. No, sir.

7 Q. Now, when Google instructs its customers how
8 to use -- whether it's DFP or DE, did Google have the
9 affirmative intent to cause the customers to infringe
10 the -- the Beneficial patents?

11 A. I'm sorry. Because I'm not a lawyer, I
12 couldn't say.

13 MR. ROSEN: Your Honor, I'd like to play
14 the witness' deposition, Page 163, Line 8 through 165
15 Line 12.

16 THE COURT: For impeachment purposes?

17 MR. ROSEN: Yes.

18 THE COURT: Proceed.

19 (Video clip playing.)

20 QUESTION: If you look at the list of
21 Defendants again, at -- at some level, whether it's
22 through online training or providing documentation or --
23 or -- or otherwise, did Google actively encourage or
24 instruct each of those Defendants on how to use DFP or
25 DE?

1 ANSWER: Yes.

2 QUESTION: When Google did so, when --
3 did it have the affirmative intent to cause those
4 Defendants to infringe the '702 patent?

5 ANSWER: Yeah, I can't answer that
6 question. I don't know.

7 QUESTION: So you don't know one way or
8 the other whether -- when Google encouraged or
9 instructed the Defendants on how to use DFP or DE,
10 whether Google had the affirmative intent to cause the
11 Defendants to infringe the '702 patent?

12 ANSWER: I know the kinds of things we do
13 when we are helping publishers get started using our
14 products. I'm not a lawyer, so I can't speculate as to
15 what that means relative to the patents in question.

16 QUESTION: Right. But I guess -- I don't
17 think -- I want to make sure -- maybe you can't answer
18 the question, and that's fine, but I want to make sure
19 we're not hung up on something different.

20 You may know what constitutes patent
21 infringement or not or -- I'm not asking anything like
22 that. I'm -- I'm just asking, did Google intend to have
23 these Defendants infringe a patent.

24 ANSWER: I -- I don't know how -- I don't
25 know the answer to that question.

1 QUESTION: Okay. What about the '943
2 patent? Did Google, when it instructed the Defendants
3 on how to use the products, affirmatively intend to
4 cause those Defendants to infringe the '943 patent?

5 ANSWER: I don't know.

6 QUESTION: When Google was -- when Google
7 was instructing the Defendants on how to use DFP and DE
8 --

9 MS. HUBER: Your Honor, we would object.
10 I'm not sure this is improper impeachment at this point.

11 THE COURT: Let's stop the clip.

12 (Video clip paused.)

13 THE COURT: Counsel, state your
14 objection.

15 MS. HUBER: Your Honor, it's improper
16 impeachment. It's the same answer that he gave in
17 response to Mr. Rosen's testimony -- or Mr. Rosen's
18 question here today.

19 THE COURT: Mr. Rosen?

20 MR. ROSEN: I don't -- the answer he said
21 three times in this depo clip is I don't know. And
22 that's a factual answer. That's different than the
23 answer he gave from the stand.

24 THE COURT: Well, whether it's the same
25 or not, we'll leave to the jury's determination, but

1 you've certainly covered it. So let's move on.

2 MR. ROSEN: Okay.

3 Q. (By Mr. Rosen) Now, Mr. Bellack, when you were
4 asked this question by me in your deposition, again,
5 this was the same deposition where you were appearing
6 not in your personal capacity, but you were appearing as
7 a representative of Google, right?

8 A. Yes, sir.

9 Q. And one of the categories that we had asked
10 Google to produce a witness on was whether Google knew
11 that the encouragement or instruction it provided the
12 accused Google partners in how to use the products and
13 services would result in infringement of the '943 patent
14 or the '702 patent, right?

15 A. Yes.

16 Q. Okay. So -- so you knew you were going to be
17 asked these questions when you were at your deposition,
18 right?

19 A. My understanding at the deposition is I was
20 there to answer questions about the DoubleClick products
21 and how they worked and how we trained people, but not
22 to answer legal questions.

23 Q. I want to make it very clear, and maybe I'll
24 ask it again and see if you change your answer. I'm not
25 asking a legal question. I want to know that if in your

1 head -- in your head -- when you're in a room with
2 customers and you're trying to train them in how to use
3 DoubleClick, in your head, are you thinking: I intend
4 to cause these people to infringe a patent?

5 A. I'm trying to help our publishers use our
6 products --

7 Q. Are you --

8 A. -- effectively.

9 Q. In your head, are you intending to have them
10 infringe a patent?

11 A. In my head, I'm not thinking about patents at
12 all in that moment.

13 Q. When you -- when you train your customers in
14 the use of DFP, you're not even aware of the '702 or the
15 '943 patent, are you?

16 A. I'm really not thinking about anything except
17 how to help the customer.

18 Q. I'm not asking -- when you're training
19 customers, when you're -- you personally, Mr. Bellack,
20 in a room with customers --

21 A. Yes, sir.

22 Q. Okay. You're -- you don't even know what the
23 '943 or the '702 patent set forth, do you?

24 A. No, I do not.

25 Q. So you personally, when you're training

1 customers, definitely do not have the intent to cause
2 them to infringe a patent, right?

3 A. I guess if you're talking in terms of do I
4 have the patent in my head at the moment I'm talking
5 about the features, no.

6 Q. Okay. You have to know the patent in order to
7 intend to cause somebody to infringe the patent, right?

8 A. I'm sorry. Just not being a lawyer, I -- I
9 don't really understand the ins and outs of what
10 constitutes patent infringement.

11 Q. Do you know what it means to intend to do
12 something?

13 A. Yes, sir.

14 Q. I intend to pick up this bottle of water right
15 now. You understand I can have the intent to do that,
16 right?

17 A. Yes, sir.

18 Q. Okay. If I don't know there's a bottle of
19 water on the desk, I can't have the intent to pick up
20 that bottle of water, can I?

21 A. No, sir.

22 Q. Okay. So now my question to you is, when
23 you're training your customers in the use of -- maybe
24 let's talk about before your deposition when you learned
25 about these patents.

1 When you were training your customers, you
2 couldn't have had the intent to cause them to infringe
3 the patent because you didn't know about the patent,
4 right?

5 A. Not intentionally, no.

6 Q. So not intentionally meaning not intent,
7 meaning you didn't have the intent to cause them to
8 infringe the patent, right?

9 A. No, sir.

10 Q. Now, you must have suspected that when you
11 came to Court today that I was probably going to ask you
12 again whether Google intends to infringe the patent when
13 it instructs its customers, right?

14 A. I guess it was possible.

15 Q. Yeah. You -- you -- look, you prepared for
16 today, right?

17 A. Yes, sir.

18 Q. You didn't just show up and take the witness
19 stand?

20 A. No, sir.

21 Q. You worked with your lawyers and you reviewed
22 your deposition transcript and you reviewed documents
23 and you came here today to testify, right?

24 A. Yes, sir.

25 Q. When you were doing that preparation, you

1 considered this whole notion of whether Google intended
2 to infringe the patent, didn't you?

3 A. Since I was with my lawyers, I'm not sure if
4 I'm allowed to answer that.

5 Q. Well, let me ask it this way then: From the
6 time of your deposition until today, have you done
7 anything to try to figure out whether Google intends to
8 cause its customers to infringe the patent?

9 A. Again, I'm not sure if I can talk about
10 conversations I had with our -- our legal team.

11 Q. Well, let's put aside conversations with your
12 legal team. Have you spoken to anyone within Google to
13 try to find out, look around, hey, guys, you know, does
14 anyone here -- when you're training, are any of you
15 intending to cause people to infringe this patent?

16 A. No, sir.

17 MR. ROSEN: Pass the witness, Your Honor.

18 THE COURT: All right. Further direct?

19 MS. HUBER: Yes, Your Honor.

20 THE COURT: All right.

21 (Pause in proceedings.)

22 THE COURT: All right. Ms. Huber, you
23 may continue.

24 REDIRECT EXAMINATION

25 BY MS. HUBER:

1 Q. Good morning, Mr. Bellack.

2 A. Good morning.

3 Q. Do you recall that Mr. Rosen asked you some
4 questions yesterday about whether DoubleClick can be
5 used to serve ads on any website?

6 A. Yes, sir -- yes, ma'am. Sorry.

7 Q. Are all websites DoubleClick customers?

8 A. No, they are not.

9 Q. Do all websites use DoubleClick to serve ads?

10 A. No, they do not.

11 Q. Mr. Rosen also asked you some questions about
12 whether DoubleClick could be used to serve ads on video
13 game consoles, and I think he even asked you about
14 gas -- gas station monitors.

15 Do you recall that?

16 A. Yes, I do.

17 Q. Is that something that many of your customers
18 do?

19 A. Gas station pumps, I think that happened one
20 time with DART Enterprise years ago. We almost use it
21 as a joke about how flexible the products are.

22 Video game consoles, not a lot, but because
23 the newer ones can serve video, we sometimes do serve
24 video ads there.

25 Q. Please describe what a customer would have to

1 do to make DFP work on a video console or a gas station
2 console.

3 A. Because those involve -- it -- it can vary.
4 Some of those environments have web browsers built into
5 them, so it works very much like showing a web page.
6 It's just set up so it's in a gas station or on a video
7 game console.

8 Sometimes it's also inserting the ads into an
9 application, like a video game or if you were watching
10 Netflix to watch movies online.

11 And there you need an additional piece of
12 software called an SDK, that means software development
13 kit, which is -- which is letting that particular
14 application make a call back to the ad server.

15 What's interesting about that is the call that
16 the SDK ultimately makes ends up looking like an ad tag.
17 It's just sort of generated in a different way.

18 Q. Are those different features of the product
19 from what we discussed yesterday with respect to serving
20 ads on websites?

21 A. It's -- as I said, it is a little bit
22 different about how the call is generated and how the ad
23 is displayed once it's returned, but the process that
24 the DFP ad server takes is pretty similar.

25 Q. Do you recall that you were asked some

1 questions about whether DoubleClick could be used by a
2 website that doesn't use cookies?

3 Do you remember that?

4 A. Yes, ma'am.

5 Q. Based on your experience with customer use,
6 are you aware of any DoubleClick customer that doesn't
7 use cookies?

8 A. I -- I've personally never met a DoubleClick
9 customer who does not use cookies.

10 Q. Now, do you recall Mr. Rosen asked you a
11 slightly different question about whether DoubleClick
12 could be used to serve an ad to a user who has disabled
13 cookies on their computer?

14 Do you remember that?

15 A. Yes, ma'am.

16 Q. Does the disabling of cookies affect how
17 DoubleClick works?

18 A. Yes, it does.

19 Q. Can you describe that?

20 A. A lot of features of DFP, like the frequency
21 capping example I mentioned yesterday, stop working
22 without the cookies. So it really limits what the
23 system can do.

24 Q. Do you recall yesterday when you and I were
25 discussing some of the common issues with DoubleClick

1 that arise for your publisher customers?

2 A. Yes, ma'am.

3 Q. Please describe whether users disabling
4 cookies is one of those issues.

5 A. It is not something that's been brought up to
6 me as a -- as something of concern.

7 Q. Mr. Bellack, both yesterday and today, you
8 were asked some questions about the '702 and '943
9 patents; is that right?

10 A. Yes, ma'am.

11 Q. When was the first time that you reviewed
12 those patents?

13 A. I saw some pieces of it in the context of the
14 deposition that Mr. Rosen was playing.

15 Q. Had you ever read a patent before that?

16 A. No, ma'am.

17 Q. Have you ever performed any analysis to
18 determine whether DoubleClick's customers infringe the
19 patents?

20 A. No, ma'am.

21 Q. And you were also asked some questions today
22 about whether Google specifically intends its customers
23 to infringe the '702 and '943 patents.

24 Do you remember that?

25 A. Yes, ma'am.

1 Q. We saw some video on that today, right?

2 A. Yes, ma'am.

3 Q. Why don't you know that?

4 A. Because I'm not a lawyer, so I don't really
5 understand patent law.

6 Q. Do you know how Google intends its DoubleClick
7 products to be used by its customers?

8 A. Yes, ma'am.

9 Q. How does Google intend its products to be
10 used?

11 A. To serve advertisements alongside content and
12 services.

13 THE REPORTER: What services?

14 THE WITNESS: Content and services.
15 Sorry.

16 Q. (By Ms. Huber) Do you recall that Mr. Rosen
17 asked you about when Google found out by the '702 and
18 '943 patents?

19 A. Yes, ma'am.

20 Q. And you testified that you understood that
21 happened when Google was sued by Beneficial for these
22 patents.

23 A. Yes, ma'am.

24 Q. After Google found out about those patents in
25 2007 and 2009 when those lawsuits were filed, did Google

1 make any major changes in the way it teaches its
2 customers how to use its products?

3 A. No, we did not.

4 Q. Mr. Rosen started the -- his examination today
5 by asking you some questions about the ad-serving
6 process, and specifically how a request to an ad server
7 doesn't begin until the user's browser requests an ad.

8 Do you remember that?

9 A. Yes, ma'am.

10 Q. What -- what is it that causes the user's
11 browser to make that request?

12 A. The inclusion of the ad tag in the code of the
13 page.

14 Q. And even before this ad-serving process that
15 Mr. Rosen was focusing on, does a publisher need to do
16 anything to make that ad tag work?

17 A. They need to insert it in their page, and they
18 need to follow the syntax that we've told them are
19 required for an ad tag.

20 Q. Mr. Rosen also asked you some questions about
21 whether you could point to the specific documents that
22 the customers at issue in this case had seen.

23 Do you remember that?

24 A. Yes, ma'am.

25 Q. All of that training documentation that we

1 discussed yesterday, who does Google make that available
2 to?

3 A. All of our customers.

4 Q. Do you have any reason to believe that these
5 customers weren't provided with that same information?

6 A. I have no reason to believe that, no.

7 Q. And this ongoing customer support that we
8 discussed at length yesterday, who does Google provide
9 that to?

10 A. All of our customers.

11 Q. Do you have any reason to believe that the
12 customers that Beneficial sued weren't provided with
13 that same training --

14 A. No, I have no --

15 Q. -- and support?

16 A. I have no reason to believe that.

17 MS. HUBER: Let's go back to that first
18 slide of the Country Weekly. Sorry, Ben. I didn't give
19 you a lot of warning.

20 Q. (By Ms. Huber) So this Brad Paisley ad that
21 appears at the top, that -- that comes from the
22 DoubleClick ad server; is that right?

23 A. Yes, ma'am.

24 Q. And what causes that ad to appear?

25 A. The ad tag that's part of the page.

1 Q. And if it weren't for that tag or if the tag
2 wasn't working properly, would the advertisement still
3 appear on that website?

4 A. No, it would not.

5 MS. HUBER: I'll pass the witness, Your
6 Honor.

7 THE COURT: Further cross, Mr. Rosen?

8 MR. ROSEN: Yes, very briefly.

9 RECROSS-EXAMINATION

10 BY MR. ROSEN:

11 Q. Just very briefly, Mr. Bellack.

12 MR. ROSEN: Your Honor, if I may proceed?

13 THE COURT: Yes, you may.

14 Q. (By Mr. Rosen) You were asked about disabling
15 cookies. So it is true that DoubleClick can be used to
16 serve ads on users that have blocked or disabled
17 cookies, right?

18 A. Yes, sir.

19 Q. And you said something to the effect that the
20 process is materially different, right?

21 A. I'm sorry. Could you say that again?

22 Q. You said something that if the user disables
23 cookies, then DoubleClick works in a different way.

24 A. A lot of the features of DFP don't work.

25 Q. Thank you. That's -- I apologize.

1 You said the features work in a different way,
2 but the ad-serving process is the exact same, right?

3 A. The process is the same, but the outcomes are
4 different.

5 Q. In other words --

6 MR. ROSEN: And, Ms. Lockhart, if I can
7 just put this on.

8 I appreciate it. Thank you.

9 Q. (By Mr. Rosen) In other words, we saw this
10 exhibit that described the ad-serving process, that all
11 stays the exact same, whether a user has enabled cookies
12 or disabled their cookies, right?

13 A. Yeah. It's -- it's sort of an example of
14 what -- what's different. Like with that frequency cap
15 example yesterday, if an ad is configured for frequency
16 capping, if no cookie is available, we actually do not
17 serve that ad at all, because we'd say, if we don't know
18 if the frequency cap has been exceeded, we'd like to err
19 conservatively and just not show it.

20 Q. So, in other words, when you disable cookies,
21 the process of serving ads is the same, but the way
22 Google does it and its effectiveness is changed?

23 | A. Yes, sir.

24 Q. Thank you very much.

25 MR. ROSEN: No further questions. Pass

1 the witness.

2 THE COURT: Further direct?

3 MS. HUBER: No, Your Honor.

4 THE COURT: All right. You may step
5 down, Mr. Bellack.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Plaintiff call your next
8 witness.

9 MS. HUBER: Your Honor, we have just one
10 request, that Mr. Bellack be excused. We've addressed
11 this with defense counsel prior to his testimony, and we
12 understand they don't have an objection.

13 MR. ROSEN: No objection, Your Honor.

14 THE COURT: All right. You're released
15 from the Rule, and you're either free to stay or go.
16 It's your choice.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Call your next witness.

19 MS. HUBER: Your Honor, at this point, we
20 have discovery responses to read into the record.

21 THE COURT: Approach the bench, please.

22 (Bench conference.)

23 THE COURT: What do you have in mind, Ms.
24 Huber?

25 MS. HUBER: We have a single

1 interrogatory, and we have requests for admission.

2 Now, there were two requests for
3 admission for each of the five Defendants. The parties
4 have agreed that we can simply read two of them and
5 explain the same RFA was propounded for each Defendant
6 and the same response was given.

7 MR. ADAMS: We agree. We don't have a
8 problem with that. They're exhibits, so -- I just don't
9 appreciate how they're going to get in.

10 THE COURT: Well, I mean, typically,
11 exhibits come in through a witness, and you -- so I'm
12 going to tell the jury that the parties have agreed
13 simply to read these into the record.

14 Is that -- is that what you're asking me?

15 MR. ADAMS: Yeah. Right. Correct.

16 THE COURT: Okay. And then you're ready
17 to call a witness after that?

18 MS. HUBER: After that, we will be
19 playing a video of Mr. Goldberg's deposition testimony.

20 THE COURT: All right. And how long do
21 you anticipate those clips to be?

22 MS. HUBER: I believe it is a little over
23 30 minutes.

24 THE COURT: Okay. All right. Let's
25 return to your places, and we'll do this.

1 MS. HUBER: Okay.

2 MR. JONES: Thank you, Your Honor.

3 MS. HUBER: Thank you.

4 (Bench conference concluded.)

5 THE COURT: Ladies and Gentlemen, the
6 parties have agreed to read into the record some
7 exhibits that have been pre-admitted. Ordinarily, these
8 would be presented through a witness, but to save some
9 time, they've agreed to do it by simply presenting it
10 into the record.

11 So with that agreement, you may proceed
12 with that, Ms. Huber.

13 MS. HUBER: Thank you, Your Honor.

14 Exhibit 12, Plaintiff's Request --
15 Plaintiff's Responses to Google's First Set of
16 Interrogatories.

17 Plaintiff Beneficial Innovations, Inc.,
18 responds to Google's first set of interrogatories under
19 Rule 33 of the Federal Rules of Civil Procedure as
20 follows:

21 Interrogatory No. 1: To the extent that
22 Beneficial contends that the accused partners infringe
23 any claim of the patents-in-suit, acknowledge whether
24 that contention is based on the use of any advertising
25 presentation, products, or services provided by Google

1 and specifically identify the product or service
2 provided by Google that Beneficial intends to rely on to
3 show infringement by any accused partner.

4 Plaintiff responds as follows --
5 Beneficial responds as follows: Plaintiff Beneficial
6 contend that each of the accused Google partners
7 infringes the patents-in-suit.

8 That contention is based, at least in
9 part, on their use of advertising presentations. This
10 contention is not specifically based on their use of any
11 particular Google product or service or more generally
12 on the use of any particular ad server technology.

13 Plaintiff's infringement contentions are
14 based in part on the fact that the accused Google
15 partners combine information for an interactive service
16 with advertising-related information resulting in
17 advertising presentations being presented at the user
18 node, along with the display presentation of the
19 service.

20 Whether the advertising presentations are
21 served by Google, some other third party, or by
22 Defendant itself does not change the analysis.

23 Plaintiff's Exhibit 13. Plaintiff
24 Google's -- excuse me -- Beneficial's responses to
25 Google's first set of requests for admission.

1 Beneficial Innovations responds to
2 Google's first set of requests for admission under
3 Rule 36 of the Federal Rules of Civil Procedure as
4 follows:

5 Google's request for Admission No. 1:
6 Please admit that Beneficial's allegations of
7 infringement against Advance Publications, Inc., are
8 based, at least in part, on Advance Publications, Inc.,
9 use of an advertising presentation, product, or service
10 provided by Google including but not limited to
11 DoubleClick.

12 Beneficial responds as follows:
13 Beneficial admits that its infringement contentions are
14 based, at least in part, on the Defendant's use of
15 advertising presentations.

16 Beneficial's infringement contentions are
17 based in part on the fact that the Defendant combines
18 information for an interactive service with
19 advertising-related information resulting in advertising
20 presentations being presented at the user node, along
21 with the display presentation of the service.

22 Whether the advertising presentations are
23 served by Google, some other third party, or by
24 Defendant itself does not change the analysis.

25 Accordingly, Plaintiff denies that its

1 infringement contentions are specifically based on the
2 Defendant's use of any particular Google product or
3 service or more generally on the use of any particular
4 ad server technology.

5 Requests for Admission No. 2: Please
6 admit that Beneficial's allegations of infringement
7 against Advance Publications, Inc., are not based, at
8 least in part, on Advance Publications, Inc.'s use of
9 advertising product or service provided by Google
10 including but not limited to DoubleClick.

11 Beneficial responds as follows:
12 Beneficial admits that its infringement contentions are
13 based in part on the Defendant's use of advertising
14 presentations.

15 Plaintiff's -- Beneficial's infringement
16 contentions are based in part on the fact that the
17 Defendant combines information for an interactive
18 service with advertising-related information resulting
19 in advertising presentations being presented at the user
20 node, along with the display presentation of the
21 service.

22 Whether the advertising presentations are
23 served by Google, some other third party, or the
24 Defendant itself does not change the analysis.

25 Accordingly, Plaintiff denies that its

1 infringement contentions are specifically based on
2 Defendant's use of any particular Google product or
3 service or more generally on the use of any particular
4 ad server technology.

5 The same two requests as Requests for
6 Admission 1 and 2 were made regarding Beneficial's
7 allegations of infringement against ALM Media
8 Properties; American Media, Inc.; Autotrader, Inc.; and
9 Demand Media, Inc. Beneficial provided the same
10 responses for each of these Defendants.

11 Request for Admission No. 11: Please
12 admit that DoubleClick advertising presentation product
13 or services are used on websites to display
14 advertisements.

15 Beneficial responds as follows: Though
16 Beneficial has no personal knowledge on this matter,
17 Beneficial is informed and believes that DoubleClick is
18 ad server technology that serves ads on websites.

19 Beyond that, Beneficial lacks sufficient
20 knowledge or information to admit or deny this request.

21 Request for Admission No. 12: Please
22 admit that DoubleClick advertising presentation products
23 or services are used on websites to display ads --
24 advertisements in response to data related to the user
25 of the website.

1 Response to Request for Admission No. 12.
2 Beneficial responds as follows: Though Beneficial has
3 no personal knowledge on this matter, Beneficial is
4 informed and believes that DoubleClick is ad server
5 technology that serves ads on websites.

6 Beyond that, Beneficial lacks sufficient
7 knowledge or information to admit or deny this request.

8 Thank you, Your Honor.

9 THE COURT: All right. Proceed with your
10 next witness, Plaintiff.

11 MS. ANDERSON: At this point, Your Honor,
12 Plaintiff would like to play a deposition excerpt of Mr.
13 Goldberg's testimony.

14 THE COURT: All right. You may proceed
15 to do that. Before you do, though, I simply want to
16 instruct the jury with regard to the materials that were
17 just read to you.

18 There may have been a different alignment
19 of the parties at the time those were generated.
20 Beneficial may have been referred to as the Plaintiff
21 there when they're the Defendant here, and Google may
22 have been referred to as the Defendant there when
23 they're the Plaintiff here.

24 The -- the content of the case, the
25 number of the parties in the case, and the alignment of

1 the parties has changed between earlier stages of this
2 case and the trial.

3 For this trial, we've clearly designated
4 Google as the Plaintiff and Beneficial as the Defendant.
5 To the extent what you may have just heard varies from
6 that, you should make sure that you allocate what Google
7 said to Google and Beneficial said to Beneficial,
8 regardless of what their labels may have been or their
9 party designations may have been at that time. I don't
10 want that to be confusing to the jury.

11 Now, with that explanation, you may
12 proceed to present your witness by video.

13 MS. ANDERSON: Thank you, Your Honor.

14 (Video playing.)

15 QUESTION: Good morning, Mr. Goldberg.

16 ANSWER: Good morning.

17 QUESTION: Do you understand that you are
18 testifying under oath today?

19 ANSWER: Yes.

20 QUESTION: And you have been deposed
21 before; is that right?

22 ANSWER: Yes.

23 QUESTION: Okay. Can you tell me briefly
24 about your education, starting with college?

25 ANSWER: Let's see. I got my BA at

1 Colorado University, University of Colorado, 1955 to
2 '59, and then immediately began law school -- '59 to '62
3 at University of Colorado. I received an LL.B, which
4 turned into a JD, and I was a -- I then went with the
5 Internal Revenue Service out here in LA in '62 and
6 received the agent's training.

7 QUESTION: Have you had any other formal
8 education?

9 ANSWER: No, other than the continuous
10 legal ed that you all get.

11 QUESTION: As -- as a practicing lawyer,
12 is that what you're referring to?

13 ANSWER: Right.

14 QUESTION: Your undergraduate degree,
15 what -- what field was that in?

16 ANSWER: Political science.

17 QUESTION: Have you ever taken any
18 classes related to the Internet?

19 ANSWER: No.

20 QUESTION: Have you ever taken any
21 classes in advertising?

22 ANSWER: I can't name any formal classes
23 I had. No.

24 QUESTION: Any formal classes in
25 marketing?

1 ANSWER: No.

2 QUESTION: If you go up to the paragraph
3 under the heading commercial success, if you could just
4 read that paragraph to yourself. It says Commercial
5 Success.

6 ANSWER: Okay.

7 QUESTION: I'm going to ask you
8 specifically about the last sentence there, which is:
9 The use of this patented method makes advertisements
10 displayed on Defendant's sites more effective because,
11 among other things, users of the site are unable to
12 disregard the advertisement by blocking, parentheses,
13 and therefore completely ignoring, close parentheses,
14 the advertisements being offered.

15 ANSWER: Okay. That's a given.

16 QUESTION: And my question is, do you
17 agree with that sentence?

18 ANSWER: Yes.

19 QUESTION: So it's your understanding
20 that if a website uses your patented invention, users
21 will be unable to block the advertisements on the site?

22 ANSWER: Yes.

23 QUESTION: So your understanding is,
24 using your patented method, a website will transmit an
25 advertisement together with a service?

1 ANSWER: Well -- and, again, to be really
2 technical, it's the advertising data and the -- and the
3 service data, would be more correctly put, but that's
4 the resulting effect.

5 QUESTION: Good morning, Mr. Goldberg.
6 How are you?

7 ANSWER: Good morning.

8 QUESTION: Have you ever been deposed
9 before?

10 ANSWER: Yes.

11 QUESTION: About how many times?

12 ANSWER: Numerous times.

13 QUESTION: Have you been deposed -- do
14 you understand that you're here today and testifying
15 both as an individual and on behalf of Beneficial
16 Innovations?

17 ANSWER: Yes.

18 QUESTION: What's your relationship with
19 the company, Beneficial Innovations?

20 ANSWER: Well, in effect, I'm the sole
21 owner.

22 QUESTION: Well, just so we're clear, the
23 two patents that I'm talking about in this case are U.S.
24 Patent 6,712,702.

25 Let's go ahead and mark this one as

1 Exhibit 2.

2 You get the ones with numbers written on
3 them. Thank you.

4 And let's mark as Exhibit 3, U.S. Patent
5 No. 7,496,943.

6 Okay. So, Mr. Goldberg, when I -- when I
7 refer to the patents at issue in this case, do you
8 understand that I'm referring to the patents that we've
9 now marked as Exhibits 2 and 3?

10 ANSWER: Yes.

11 QUESTION: Have you personally, not
12 Beneficial -- but have you personally been involved in
13 identifying potential licensees for either Exhibit 2 or
14 Exhibit 3?

15 ANSWER: I believe that I have.

16 QUESTION: And what did you do -- you
17 personally do to identify a license -- potential
18 licensees for either Exhibit 2 or Exhibit 3?

19 ANSWER: I'm constantly on the Internet,
20 and I make note of websites that appear to be violating
21 the patent.

22 QUESTION: How do the advertisements get
23 into that display?

24 ANSWER: They can get into that display
25 by -- under my patent anyway, by having a code that --

1 that requests that ad.

2 QUESTION: You mentioned one of the
3 documents that you reviewed was interrogatory responses
4 in this case; is that correct?

5 ANSWER: That's correct.

6 QUESTION: Let's mark as Exhibit 4
7 Beneficial's responses to Google's first set of
8 interrogatories.

9 Mr. Goldberg, you've seen what we've now
10 marked as Exhibit 4 before?

11 ANSWER: Yes.

12 QUESTION: If you turn to the next page,
13 Page 4, in the -- in part of the response, you'll see
14 that there's a -- the first full paragraph that begins
15 with Plaintiff's contend -- Plaintiff contends. I'm
16 sorry.

17 Do you see that?

18 ANSWER: Yes.

19 QUESTION: And it says: Plaintiff
20 contends that each of the accused Google partners
21 infringes the patents-in-suit. Did I read that
22 correctly?

23 ANSWER: Yes.

24 QUESTION: Okay. And the next sentence
25 says: That contention is based, in part, on their use

1 of advertising presentations.

2 Did I read that correctly?

3 ANSWER: Yes.

4 QUESTION: What -- what is -- what is
5 your understanding of what that sentence means?

6 ANSWER: First of all, your term accused
7 Google partners, I assume those are the Defendants in
8 the main suit, right?

9 QUESTION: That accused Google partners
10 is defined not in this document, but I will represent to
11 you is a subset of people -- a subset of -- of the
12 Defendants in this case.

13 ANSWER: Okay. And your question is?

14 QUESTION: The sentence that says, quote,
15 that contention is based, at least in part, on their use
16 of advertising presentations.

17 ANSWER: Okay.

18 QUESTION: What does that mean to you?

19 ANSWER: That they use advertising.

20 QUESTION: That -- that website -- the
21 accused websites use advertising?

22 ANSWER: The website uses -- yeah, these
23 Defendants use advertising presentations.

24 QUESTION: Okay. When it comes to your
25 patents, does it matter where the advertisement comes

1 from that's displayed?

2 ANSWER: In response to your question,
3 your specific question, I can't say. I don't know.

4 QUESTION: You don't know?

5 ANSWER: I don't know.

6 QUESTION: Okay. The -- the -- the next
7 sentence reads: Plaintiff's infringement contentions
8 are based, in part, on the fact that the accused Google
9 partners combine information from an interactive service
10 with advertising-related information.

11 Did I read that correctly?

12 ANSWER: You didn't read the entire
13 sentence, right? You just stopped?

14 QUESTION: I did stop. We'll -- we'll
15 get to the second half, but I want to do it in two parts
16 because there's a lot of it.

17 ANSWER: Okay. And your question is?

18 QUESTION: Did I read -- so far, have I
19 read it correctly? Plaintiff's infringement contentions
20 are based, in part, on the fact that the accused Google
21 partners combine information from an interactive service
22 with advertising-related information.

23 ANSWER: You read that correctly.

24 QUESTION: Earlier, we were talking
25 generally about ad servers getting advertisements onto a

1 user's website or webpage, and you referenced that
2 there's code that can -- that can make that happen.

3 Do you recall that?

4 ANSWER: Yes.

5 QUESTION: Okay. And am -- am I correct
6 that the -- the claims that we're talking about at issue
7 in this case deal with the display of an advertisement,
8 along with website information at the same time to the
9 user?

10 ANSWER: In general, you're quite
11 correct.

12 QUESTION: Okay. And then unfortunately,
13 we're going to have to do all three of them at the same
14 time. So in Exhibit 5, which we marked that one, if
15 you'll flip to Page A-1.

16 At the bottom of the 1, they'll go
17 through a series of numbers and then they'll start
18 having a prefix. There'll be Page No. A, as in alpha,
19 1.

20 ANSWER: Oh, I see. Okay.

21 QUESTION: And in -- in this document,
22 you'll see two columns. In the left column is a
23 quotation of claim language. Do you see that?

24 ANSWER: Yes.

25 QUESTION: Okay. And you recognize that

1 as being words from the various patent claims?

2 ANSWER: Appears to be.

3 QUESTION: Okay. And in the right-hand
4 column, you'll see the heading is called Accused
5 Apparatus. Do you see that?

6 ANSWER: Yes.

7 QUESTION: And then below it is -- are
8 things written by Beneficial that explain why the
9 accused websites meet the various limitations. Do you
10 see that?

11 ANSWER: You're telling me it was written
12 by Beneficial. I -- I don't -- I don't know who wrote
13 this.

14 QUESTION: Let's go back to the front
15 page of the document, front page of the Exhibit 5?

16 ANSWER: Okay.

17 QUESTION: Okay. You see at the bottom,
18 pursuant to Patent Rule 3-1, Plaintiff, Beneficial
19 Innovations, submits the following disclosure of
20 asserted claims and infringement contentions.

21 Do you see that?

22 ANSWER: Yes.

23 QUESTION: Okay. So do you understand
24 that this is Beneficial's contentions of what infringe
25 your patents?

1 ANSWER: It's just you took me to the
2 middle of a page and --

3 QUESTION: That's fine.

4 ANSWER: -- I'm assuming what you're
5 saying. That's all.

6 QUESTION: Okay. But now -- but now,
7 we're on the same page as to what this is?

8 ANSWER: Okay.

9 QUESTION: Is that a yes?

10 ANSWER: Yes.

11 QUESTION: Does the advertisement that's
12 shown to the user have to be based on that user
13 identifiable information?

14 ANSWER: I don't know. I don't know if
15 there's anything in there that says that.

16 QUESTION: Say that again?

17 ANSWER: I don't know. I don't know if
18 there's anything in here that says that.

19 QUESTION: Well, let's look at the
20 element that deals with combining, okay?

21 ANSWER: Okay.

22 QUESTION: So if you go to Column 40
23 about Line 30, you'll see it says: One or more
24 programmatic elements for combining advertising,
25 relating information with service-related information to

1 obtain a resulting con -- combination that is in a
2 format.

3 And it goes on. Do you see where I'm
4 talking about?

5 ANSWER: Yes.

6 QUESTION: Okay. Is this the aspect of
7 your claim that deals with that combination of service
8 information and advertising information that's displayed
9 to a user?

10 ANSWER: Yes.

11 QUESTION: Okay. Is there anything about
12 this that requires that the advertisement be related to
13 the user identification that's stored in the store?

14 ANSWER: I don't know how to answer your
15 question.

16 QUESTION: So you talked about combining.
17 You said an important aspect of your invention was
18 combining service information with advertisement
19 information and displaying it to the user.

20 ANSWER: Correct.

21 QUESTION: Okay. Is it an aspect of your
22 invention that that advertisement has to be targeted at
23 the user based on user identification?

24 ANSWER: I don't know. I can't say it
25 does.

1 QUESTION: It -- wouldn't it have to say
2 something like the advertisement related to the user or
3 associated with the user identification in order to
4 require that?

5 ANSWER: Let's see. I'm not competent to
6 say, you know, anymore than I've told you, what I've
7 learned about talking to patent attorneys. I don't -- I
8 don't know if it would or not.

9 QUESTION: Okay. So you don't know if
10 that's required?

11 ANSWER: No.

12 QUESTION: But it is required that it
13 combine the ad and display it?

14 ANSWER: Yes.

15 QUESTION: Okay. You said that part of
16 it is combining service with an ad, displaying it to the
17 user, and the user not being able to avoid seeing it.

18 ANSWER: Correct.

19 QUESTION: Okay. What -- what part of
20 the claim deals with that?

21 ANSWER: Well, it's the -- as it says, I
22 guess the programmatic elements for combining, because
23 prior to this, the -- an ad can be coming from two
24 separate places, and it could be, you know, the --
25 although the user wouldn't know one -- one way or

1 another where it was coming from.

2 This combination, planning it on the --
3 on the provider's -- if I'm using the correct
4 language -- on the provider's server, it then -- the --
5 it's by, technically, the whole -- the entire service.
6 And the ad come in as one thing, and, therefore, they --
7 it cannot be changed. Because the user -- user and no
8 software, as I understand, has any way to define
9 what's -- what's the service and what's just an ad. So
10 they can get rid of the ad, they probably would.

11 QUESTION: So what your invention was
12 distinguishing is you get one webpage that has service
13 and ad information on it as opposed to a webpage that
14 has a service on it and, for example, a pop-up that is a
15 separate window that is distinct from the combined
16 website?

17 ANSWER: That's one -- one -- but only
18 one.

19 QUESTION: Okay. So what -- what --
20 what's another aspect other than that?

21 ANSWER: It has to be combined at the
22 entire page is combined, you know, the ad and the -- and
23 the server.

24 QUESTION: Right. Into one webpage?

25 ANSWER: Yes.

1 QUESTION: Got you. Okay.

2 ANSWER: Whereas the pop-up you described
3 was not.

4 QUESTION: And that -- that's what I
5 said. That's distinguishing between your invention
6 and -- and what might have existed at the time?

7 ANSWER: One of them is also such thing
8 as under-ads that come up where it hides the page.
9 That's also a separate and distinct ad.

10 QUESTION: Again, because it's not
11 combined in the same webpage?

12 ANSWER: Right. Right.

13 QUESTION: Okay. Earlier today, I asked
14 you a question about if the webpage that gets returned
15 from the provider doesn't have advertisement information
16 on it, would it relate to your patent claims. And now
17 that we've spent a little more time understanding what
18 your patent claim covers, I'm going to ask that question
19 again.

20 If a website was returned to you that did
21 not have a combined advertisement service on it, would
22 -- would it relate to this patent claim?

23 ANSWER: Probably not --

24 QUESTION: Before the break,
25 Mr. Goldberg, we were talking about code that's used to

1 generate and display a website to a user. My question
2 to you was, is there anything in Claim 53 that describes
3 a -- a new code different from, say, HTML that builds
4 webpages?

5 ANSWER: I don't know. There -- I don't
6 know as there is. I can't say there is.

7 QUESTION: Again, what your Claim 53
8 relates to is a webpage that's displayed to a user that
9 contains a combination of advertisement information and
10 service?

11 ANSWER: Yes.

12 QUESTION: Do you think the claim
13 requires that that advertisement information be related
14 to the user identification stored at the provider?

15 ANSWER: As I read this claim, possibly.
16 I just have a hard time understanding what you're
17 saying. I really can't answer you.

18 QUESTION: You don't -- possibly is what
19 I think your answer is. You -- you don't see anything
20 that makes it a requirement?

21 ANSWER: What I see is an assumption in
22 there. I don't see a must, like you're asking.

23 QUESTION: Okay. Okay. Does your patent
24 require that cookie information be used as part of what
25 ads to display to the user?

1 ANSWER: And, again, I -- I guess I've
2 answered that. Appears to me to be an assumption in
3 there, and I don't know. I can't state that.

4 QUESTION: How about this: Just explain
5 to me your understanding of how third-party ad servers
6 go about putting advertisements on a user's website.

7 ANSWER: I would guess that there's a --
8 there's a code that requests it.

9 QUESTION: And the code that requests it
10 comes from where?

11 ANSWER: From the, I guess, website.

12 QUESTION: The -- the provider website?

13 ANSWER: Yes.

14 QUESTION: Okay. What's the purpose of
15 an ad server?

16 ANSWER: I would respond as a layman, to
17 serve ads.

18 QUESTION: Okay. To serve -- to serve
19 ads where?

20 ANSWER: In the case -- in our context, I
21 guess serve ads on -- on websites.

22 QUESTION: Okay. Would there be any
23 purpose of an ad server other than to serve ads on
24 websites?

25 ANSWER: I couldn't say.

1 QUESTION: Part of your -- what's
2 described in your '702 patent would be using cookies
3 for -- for reasons other than displaying advertisements?

4 ANSWER: Okay.

5 QUESTION: Do you agree with that?

6 ANSWER: Sure.

7 QUESTION: But you would agree that HTML
8 is a common mechanism for generating a website?

9 ANSWER: Well, it was. I don't know
10 about even today. It may not be today.

11 QUESTION: Have you had a chance to read
12 Claim 1 of the '943 patent that you're a co-inventor on?

13 ANSWER: Yeah, I read it.

14 QUESTION: Okay. So what I want to do
15 here is -- is contrast this claim a little bit with the
16 claim we went through in the -- in the '702, okay?

17 So my question is, does this claim
18 require that the providing website store information
19 about the user?

20 ANSWER: It doesn't appear so.

21 QUESTION: Does Claim 1 of the '943
22 patent require information stored at the user node such
23 as a cookie as we saw in Claim 53 of the '702 patent?

24 ANSWER: I don't see it here now, no.

25 QUESTION: So if -- if it doesn't have

1 those two things, as you did with Claim 53 of the '702
2 patent, can you explain to me what Claim 1 of the '943
3 patent is describing about your invention?

4 ANSWER: I believe this is one that --
5 that does unrequested ads.

6 QUESTION: What does that mean?

7 ANSWER: Where an ad -- where ads are
8 presented without the user requesting another ad, you
9 know --

10 QUESTION: What would be the situation?

11 ANSWER: -- automatically.

12 QUESTION: -- in which a user would
13 request another ad?

14 ANSWER: If he clicks on an ad and then
15 more information would come up then.

16 QUESTION: Okay. So this automatically
17 displays more ads, even if you don't click on them?

18 ANSWER: Well, it looks like one of the
19 things anyway.

20 QUESTION: When you say it looks like one
21 of those things, what are you -- what are you looking
22 at?

23 ANSWER: Well, there's also the combining
24 of the information for the interactive service and the
25 advertising-related information for use in presenting

1 the ads.

2 THE REPORTER: I'm sorry?

3 ANSWER: For use in presenting the ads.

4 QUESTION: That's a similarity to the --
5 Claim 53 of the '702, right, the aspect of combining the
6 advertisement with the -- with the provider-related
7 service information?

8 ANSWER: Yes, that's similar. Correct.

9 QUESTION: Okay. So, again, could you --
10 could you describe generally for me what aspect of -- of
11 your invention this Claim 1 of the '943 patent is
12 discussing?

13 ANSWER: As I said, as I look at it right
14 now, it appears -- it appears to be the presentation of
15 unrequested ads.

16 QUESTION: But there's nothing in here
17 about the -- the service that is provided by the
18 providing website, storing information about the user?

19 ANSWER: Oh, no. It definitely requires
20 a service.

21 QUESTION: It definitely requires a
22 service?

23 ANSWER: Oh, yeah. Sure. The Internode
24 (sic) -- even the (c) here, the Internode (sic), the
25 user node, receives -- the user node receives via the

1 providing node said information for said interactive
2 service. And it talks about the service, I think, in
3 the previous paragraphs too.

4 QUESTION: But the providing -- the
5 website provider that gives the information related to
6 the interactive service, it doesn't need to store
7 information about the user, correct?

8 ANSWER: It doesn't talk about storage
9 here. I don't know what it needs to do, but this
10 particular claim doesn't look like it talks about
11 storage. No.

12 QUESTION: Okay. And it doesn't talk
13 about information stored at the user node, such as
14 cookies either, does it?

15 ANSWER: Correct.

16 QUESTION: Okay. There's nothing in
17 Claim 49 of the '943 patent that talks about storing
18 information about the user on the provider's website?

19 ANSWER: This talks about storing on the
20 user node.

21 QUESTION: Okay. But not the provider
22 website?

23 ANSWER: It doesn't indicate providing --
24 provider network site. No.

25 QUESTION: But are you aware -- given

1 that -- our conversation before, that all of those types
2 of data could count as user identification stored by the
3 provider, are you aware of any website that shows
4 advertising where the underlying web server stores no
5 data about its user?

6 ANSWER: Again, personally, I'm not aware
7 of it.

8 (End of video clip.)

9 THE COURT: Does that complete your
10 witness by deposition, Counsel?

11 MS. ANDERSON: Yes, Your Honor. That's
12 the completion of Mr. Goldberg's testimony.

13 THE COURT: All right. Let's turn the
14 lights up in the courtroom, please.

15 Counsel, approach the bench, please.

16 (Bench conference.)

17 THE COURT: Who do you have next,
18 Ms. Anderson?

19 MS. ANDERSON: We have Dr. Peter
20 Alexander, and that will be our final witness, Your
21 Honor.

22 THE COURT: How long do you expect your
23 direct to go?

24 MS. ANDERSON: I think it will be 45
25 minutes perhaps, Your Honor.

1 THE COURT: All right. Then we'll take a
2 recess now, and we'll start with him after the recess.

3 MS. ANDERSON: Thank you.

4 (Bench conference concluded.)

5 THE COURT: Ladies and gentlemen, before
6 we call or before the Plaintiff calls the next witness,
7 we're going to take a morning recess at this time. You
8 may leave your notebooks in your chairs, if you like.

9 Take an opportunity while in the jury
10 room to stretch your legs, get a drink of water, but
11 don't discuss the case among yourselves. We'll be back
12 in here shortly and continue, but you are excused for
13 recess at this time.

14 COURT SECURITY OFFICER: All rise.

15 (Jury out.)

16 THE COURT: All right. Court stands in
17 recess.

18 (Recess.)

19 COURT SECURITY OFFICER: All rise.

20 THE COURT: Be seated, please.

21 All right. Let's bring in the jury,
22 Mr. McAteer.

23 COURT SECURITY OFFICER: All rise for the
24 jury.

25 (Jury in.)

1 THE COURT: Be seated, please.

2 Plaintiffs call your next witness.

3 MS. ANDERSON: Thank you, Your Honor.

4 Google calls Dr. Peter Alexander.

5 THE COURT: All right. Dr. Alexander, if
6 you'll come forward. My recollection is that you have
7 been sworn; is that correct?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Please have a seat.

10 We need to pass out some notebooks,
11 Counsel?

12 MS. ANDERSON: May we approach, Your
13 Honor, and do that?

14 THE COURT: Proceed.

15 MS. ANDERSON: Thank you.

16 (Pause in proceedings.)

17 THE COURT: All right, Counsel. You may
18 proceed when you're ready.

19 MS. ANDERSON: Thank you, Your Honor.

20 PETER ALEXANDER, Ph.D., PLAINTIFF'S WITNESS,

21 PREVIOUSLY SWORN

22 DIRECT EXAMINATION

23 BY MS. ANDERSON:

24 Q. Good morning, Dr. Alexander.

25 A. Good morning.

1 Q. Would you please introduce yourself to the
2 jury.

3 A. Yes. My full name is Peter Alexander.

4 Q. Can you please tell the jury a little bit
5 about yourself.

6 A. Yes. I live in Southern California in Orange
7 County, and I am married with two adult children. And
8 I've been married to the same gal for 49 years now.

9 Q. And where are you from, Dr. Alexander?

10 A. I was born and raised in New Zealand.

11 Q. When did you -- did you live in New Zealand
12 all your life, or did you ever come to move to somewhere
13 else?

14 A. Well, my wife and I actually arrived on the
15 shores here in the United States in 1966.

16 Q. All right. How long have you lived in the
17 United States, Dr. Alexander?

18 A. Except for three or four years when I was
19 outside the country, I have been here continuously.

20 Q. And where do you live today?

21 A. Southern California.

22 Q. And are you a United States citizen?

23 A. Yes.

24 Q. For how long?

25 A. We became -- my wife and I became citizens in

1 1980.

2 Q. Thank you.

3 Where have you gone to school, Dr. Alexander?

4 A. My undergraduate degree was in New Zealand at
5 the University of Canterbury, and I did a Bachelor of
6 Science degree in electrical engineering.

7 And following that degree, I was awarded a
8 Fulbright Scholarship, which is an academic award for
9 students from other countries to study in the U.S., but
10 it's also for American students to study abroad.

11 And do you wish me to continue?

12 Q. Are you finished with your educational
13 background?

14 A. No.

15 Q. Okay.

16 A. So with that Fulbright Scholarship, I came to
17 the United States and was a graduate student, and I
18 studied at the University of Illinois with a Master of
19 Science degree in electrical engineering, and
20 subsequently spent four years at MIT where I completed
21 the Ph.D. degree in 1971.

22 Q. Thank you.

23 And have you worked over the years since
24 earning your degree?

25 A. Yes. I -- after finishing the Ph.D. degree, I

1 -- I spent three or four years as a university
2 professor, and I was teaching computer engineering,
3 basically.

4 And then I returned to the United States and
5 started working in essentially the defense industry.
6 We -- in -- in this time period, we were developing
7 software systems and computer systems generally for the
8 defense department.

9 Q. And when you say the defense department, for
10 which country?

11 A. Yes, the United States.

12 Q. And can you give the jury some examples of the
13 agencies you worked for in connection with your defense
14 industry work.

15 A. Yes. I -- I worked on many projects. I had a
16 security clearance, of course, and I worked -- worked on
17 projects for the Naval Underwater System Center, Naval
18 Research Labs, what was called the Defense
19 Communications Agency at the time. And another one was
20 Rome Air Development Center. That's in -- up in New
21 York State.

22 Q. Did the focus of your work change at some
23 point in time away from the defense industry?

24 A. Yes. Actually, some of that early work
25 involved the National Security Agency. And in one of

1 the projects we had with them, we developed a very
2 high-speed computer, at least high speed at the time.

3 And the -- with the approval of NSA, we
4 actually commercialized them as -- as a product.
5 And so I started a company in the 1980s, and we
6 developed a commercial version of this computer with a
7 lot of software and sold it to various organizations,
8 defense organizations, for radar and sonar systems,
9 image processing.

10 And we also sold it to organizations doing
11 seismic research for, you know, discovery of new oil
12 resources, and image processing, generally for medical
13 applications.

14 Q. Thank you.

15 Did you ever do any work in connection with
16 Internet technologies?

17 A. Following the -- the -- the acquisition of our
18 company -- our company was acquired, and so in 1989, I
19 actually started on a new portion of my career, which
20 was to do with Internet technology.

21 And of course, most people aren't really aware
22 that the Internet had been in existence already some 20
23 years by the time I joined in. So I wasn't really one
24 of the pioneers, but this was before the advent of the
25 web browser.

1 So it was Internet technology that used
2 basically textual representation data.

3 Q. And what was the company you were working with
4 beginning in 1989?

5 A. That company was called Fibronics
6 International.

7 Q. What kind of work did you do with Fibronics?

8 A. I managed a team -- I managed a team that was
9 developing router software. Routers are the basic
10 building block for the Internet. They allow for the
11 transfer of packets through the Internet across the
12 world. And we developed software and hardware for
13 those.

14 We also developed software for transfer of
15 files and email. Those were the big applications in
16 those days.

17 THE COURT: Dr. Alexander, if you would
18 pull the microphone a little closer to you, please.

19 Thank you.

20 Continue.

21 MS. ANDERSON: Thank you.

22 Q. (By Ms. Anderson) Would you please describe to
23 the jury other experience you may have had with
24 Internet-related technology.

25 A. Yes, certainly.

1 After -- after that experience, developing
2 essentially core Internet applications and core
3 infrastructure components, I spent some time developing
4 websites.

5 Starting around 1997, I was developing website
6 technology. And I developed systems that were used
7 to -- used in business applications, in particular,
8 semiconductor manufacturing and construction industries
9 and also commercial -- or consumer-type websites
10 relating to job search, for example.

11 Q. Thank you.

12 Did you turn your attention to a different
13 line of work following your work that you just
14 described?

15 A. Yes. Subsequently, I started to do work that
16 was related to forensic analysis. I have a very
17 detailed understanding of how computers work.

18 So I -- I took on some projects as a
19 consultant to -- to examine the internal structure of
20 computers, to retrieve files that have been deleted.
21 That's sort of the nature of forensic analysis of
22 computer.

23 Q. And has the work that you've done in that
24 regard involved providing expert opinions in connection
25 with cases?

1 A. Yes. Over a period of time, I -- I was called
2 upon, actually, by various organizations to contribute
3 to examination of software systems in regard to patent
4 cases.

5 Q. Thank you.

6 Do you believe that you have any area of
7 expertise?

8 A. Yes, I certainly do. I've spent -- well, I
9 first started programming computers back in 1972 or '71.
10 So I have very deep expertise in computer software and
11 the -- the implementation of software systems.

12 Q. What, if any, relationship does the area of
13 Internet website design have to software engineering?

14 A. Well, website implementation is -- is really
15 just another type of software engineering. It's
16 basically creating all of the mechanics of the -- the
17 server software that will deliver web pages whenever
18 your browser requests a page.

19 Q. And, Dr. Alexander, have you testified as an
20 expert witness in court before?

21 A. Yes, approximately 10 times.

22 Q. And what was the general area of subject
23 matter on which you testified in those cases?

24 A. It -- it's always been software and the
25 analysis of software. The -- you know, the domains, the

1 subject matter varies conservatively, but my role was
2 always software development and -- and how the software
3 systems worked.

4 Q. Thank you.

5 MS. ANDERSON: Your Honor, Google would
6 offer Dr. Alexander as an expert in the area of computer
7 software engineering.

8 THE COURT: Is there objection?

9 MR. ROSEN: No objection.

10 THE COURT: He will be so designated.

11 MS. ANDERSON: Thank you, Your Honor.

12 THE COURT: Continue.

13 Q. (By Ms. Anderson) Dr. Alexander, are you being
14 compensated for the time you have spent working in
15 connection with this case?

16 A. Yes.

17 Q. And at what rate are you being compensated?

18 A. I'm compensated at a rate of \$350 per hour.

19 Q. Now, are your opinions in this case affected
20 in any way by the amount you are being paid?

21 A. No, not at all.

22 Q. And is the amount you are being paid affected
23 in any way by what opinions you provide?

24 A. No.

25 Q. Dr. Alexander, would you describe to the jury

1 generally what you were asked to do in connection with
2 the case.

3 A. Yes. I was -- I was asked to provide tutorial
4 information on state-of-the-art technology as it relates
5 to the patents in the lawsuit.

6 I was asked to provide similar analysis and
7 tutorial information about how ads are delivered to a
8 web browser running on a client computer and how they're
9 presented and rendered, displayed, basically.

10 And I was asked to give some information about
11 how Google's DoubleClick products work and how they
12 relate to the state-of-the-art technology for ad
13 delivery, as well as how they relate to the patents.

14 Q. Thank you.

15 Were you asked to give any legal opinions in
16 connection with this case?

17 A. No, I was not.

18 Q. And are you a lawyer?

19 A. No.

20 Q. Were you asked to give any opinions in this
21 case about whether or not there is infringement or
22 whether or not the patents are valid?

23 A. No, I was not.

24 Q. Were you asked to make any fundamental
25 assumptions in connection with the opinions that you --

1 you are going to give to us in this case?

2 A. Yes. The -- the -- the basic assumption I was
3 given was that Beneficial, having provided some
4 infringement contentions to the Court, I was told to
5 assume that those were accurate and complete documents
6 that describe the -- Beneficial's positions regarding
7 infringement by Beneficial's partners.

8 Q. And so just to be clear, was part of your work
9 to -- to confirm whether or not Beneficial's statements
10 in the infringement contentions were actually true as an
11 opinion of infringement?

12 A. No. I didn't -- I didn't have to research the
13 validity of those statements. I took them as truthful.

14 Q. Now, did you review other materials in
15 connection with providing opinions in this case?

16 A. Yes, I did.

17 Q. All right. And could you describe to the jury
18 generally the kinds of materials you relied on. And for
19 your reference, if you need to refresh your memory about
20 that, you will see at the back of your binder
21 Exhibit 559, which should not be displayed.

22 A. Yes. Generally, I relied on a large number of
23 documents. They included deposition transcripts, the
24 deposition transcript of Mr. Goldberg and Mr. Bellack.

25 I looked at a large number of archival

1 Internet documents, information that's been captured
2 over the last two decades regarding the Internet. And I
3 looked at the -- the patents themselves, the '702 and
4 '943 patent. I examined them in some detail.

5 And then I did also look at a large number of
6 documents relating to the case, in terms of motions for
7 summary judgment and similar documents.

8 Q. Thank you.

9 MS. ANDERSON: Now, Your Honor, at this
10 point in our examination, may we have permission to use
11 the -- the easel for drawing with the witness?

12 THE COURT: You plan to use it with the
13 witness, Counsel?

14 MS. ANDERSON: Yes, Your Honor.

15 THE COURT: You may have leave to do
16 that. My suggestion would be, with the assistance of
17 co-counsel, you move it adjacent to the bar, the
18 railing, and then Dr. Alexander will be able to step
19 down and reach it from there.

20 MS. ANDERSON: Thank you.

21 Your Honor, would you like the witness to
22 stand on the side of the bar closer to me or --

23 THE COURT: No. I'd like to keep the
24 witness on that side of the railing.

25 MS. ANDERSON: That side. Thank you.

1 MR. JONES: Is this where you want it?

2 THE COURT: Why don't you move it a
3 little closer toward the jury.

4 MR. JONES: Oh, I'm sorry.

5 THE COURT: That's fine.

6 MR. JONES: Excuse me.

7 THE COURT: And that's a good position
8 for you, Dr. Alexander.

9 MS. ANDERSON: Thank you, Your Honor.
10 Thank you.

11 THE WITNESS: Your Honor, would you like
12 me to rotate it toward you?

13 THE COURT: Well, let's wait until she
14 asks you what to do.

15 And, Mr. McAteer, we'll make the handheld
16 mic available for the witness as well.

17 MR. ROSEN: Your Honor, may I ask
18 permission to go to the corner over there?

19 THE COURT: Absolutely. Absolutely,
20 Counsel. Feel free to position yourself so you can see.

21 MS. ANDERSON: And, Your Honor, may I
22 have permission, when the drawing begins, to be able to
23 see, or shall I stay over here?

24 THE COURT: No. You may go to the side
25 of the easel as well.

1 MS. ANDERSON: Thank you, Your Honor.

2 Q. (By Ms. Anderson) Dr. Alexander, so we can
3 understand a bit about the work you've done in
4 connection with this case, would you explain to the jury
5 a bit about what happens when someone tries to look at a
6 page on the Internet?

7 A. Yes, certainly.

8 THE COURT: Let me interrupt just a
9 second. If the witness is going to be using the easel
10 to answer the question, then he's perfectly fine there.
11 If he's going to give answers that don't require the
12 easel, he should be at the -- the witness stand until
13 the easel is going to be used.

14 MS. ANDERSON: Agreed, Your Honor. And
15 if -- with permission of the Court, the response to this
16 particular question would be an easel drawing.

17 THE COURT: That's fine.

18 MS. ANDERSON: Thank you.

19 THE COURT: I just want to be clear.

20 MS. ANDERSON: And we'll return.

21 THE COURT: Okay. Go ahead,

22 Dr. Alexander.

23 THE WITNESS: Thank you.

24 A. So what -- what I'm about to explain is really
25 the mechanics of what happens with a web browser when

1 it -- when you use it at home or at your office.

2 So life starts with a web browser. And
3 this -- this is really running on what's typically
4 called a client computer. So that's -- that's really
5 the computer itself. The web browser is a piece of
6 application software that you probably are familiar with
7 that runs on the computer, and its -- its role is to
8 talk to web servers.

9 So I can draw a web server over here. It's --
10 it's also sometimes referred to as a website, so if I
11 use that -- again, there's hardware, and then there's
12 software that represents the website.

13 So the -- the action begins when you click on
14 a -- a hyperlink. And so this might be something that
15 says www.ebay.com. And you can also type it into the
16 text block, and you may have done this.

17 What happens as a consequence of clicking on
18 that hyperlink is that there is a message that goes to
19 the web server, and the web server receives this
20 so-called HTTP message. It's a request.

21 And that's -- there's a little packet of
22 information, and it's got inside it some instructions
23 really for the web server to -- to do something. And
24 the typical response is that back comes a document.
25 And this is called an HTML document, and the HTML

1 reference there is hypertext markup language. It's --
2 it's sort of the language you heard a little bit about
3 this morning that web browsers understand.

4 It's just another language like Italian or
5 French. It's -- it's just that the web browser knows
6 how to interpret the words in the document.

7 So an important -- this is the response, by
8 the way.

9 So an important aspect of that response
10 document, the HTML document, is it has things called
11 tags. And they are normally shown with an angle
12 bracket, and they can be tags like image, and it can
13 have a source equals, and it can have another tag,
14 video, if you ever have watched video on a -- on a web
15 browser, the tags are seen by the -- the browser when it
16 reads this document, and it -- it treats them as
17 instructions to do something.

18 So, for example, on the -- on the case of an
19 image tag, the brow -- oh, I should have mentioned that
20 there's a person over here, of course, running this
21 browser, and that person is -- is doing all the action
22 of clicking on the hyperlink.

23 But once they've done the clicking on the
24 hyperlink, the rest sort of flows automatically. And
25 the image tag -- when the browser recognizes the image

1 tag, it goes off into another server, which is able to
2 provide image information, typically another document or
3 another set of data.

4 And so, you know, that might be an image of
5 something, a person. It comes back, and that is
6 displayed -- that's displayed on the browser's window,
7 along with other content.

8 So the -- there may be -- there may be text
9 that's inside this HTML document that's displayed, and
10 then the -- the request for an image from this image
11 server gives back an image, if it's -- if it's
12 requested, if it's part of the -- the HTML document.

13 And what happens is all of these pieces --
14 typically, if you look at -- look behind the scenes,
15 there will be hundreds of different tags, and there are
16 hundreds of different kinds of tags too.

17 But the -- the reference that they make to
18 these sources, they point to a location around the
19 world. It's not the same location as this eBay server.
20 They can come from lots of different places.

21 And typically, there will be tens of hundreds
22 of pieces of information that flow into the browser over
23 a period of time. They just sort of flow in as they --
24 as they arrive.

25 And if you've ever used a browser and had a

1 slow connection, you probably understand what I'm
2 talking about, because sometimes they also appear in
3 uncertain points in time.

4 And so eventually everything arrives and is
5 displayed or rendered on the browser.

6 Q. (By Ms. Anderson) Thank you.

7 And we'll get a little bit later in the
8 discussion today a discussion about DoubleClick. But
9 for the jury's sake, can you indicate for the jury where
10 a DoubleClick ad tag would show up on the drawing you
11 have here?

12 A. Yes, I can. Well, there will be -- something
13 you heard about ad tags is, there are certain kinds of
14 tags that relate to bringing ads to the browser. And
15 one example would be like -- I just got it in, but there
16 will be a tag which might be a script tag, which
17 represents an ad tag, and it will have parameters. This
18 one will have something like source equals
19 ad.DoubleClick.net. So that's -- that's a reference to
20 a server.

21 The -- the ad part of it is the name of a
22 computer, and the DoubleClick.net is like a street
23 address. So you're going to a particular server in a
24 particular location around the world. And that's --
25 that's the nature of the ad tag.

1 Do you wish me to continue or --

2 Q. No, you can sit down now.

3 MS. ANDERSON: Your Honor, would you like
4 me to move the easel back?

5 THE COURT: Yes.

6 All right. Continue, Counsel.

7 MS. ANDERSON: Thank you, Your Honor.

8 Q. (By Ms. Anderson) Dr. Alexander, thank you for
9 the drawing.

10 Could you please tell the jury what a cookie
11 is?

12 A. A cookie is just a small piece of information.

13 Q. All right. And can you give us an example
14 about how a cookie might be used in connection with a
15 website?

16 A. Yes. A cookie, its primary value is that
17 it -- it holds information about a previous visit to a
18 website. So when you're using a browser and it's
19 maintaining some knowledge of your previous visit. And
20 an example might be shopping carts. You probably all
21 had the experience where you selected something to buy
22 and gone away from the computer and you come back, and
23 day's later, it somehow remembers a lot of things. So
24 that's the shopping cart example of a cookie.

25 Q. Thank you.

1 Can you please give the jury some examples of
2 the kind of information that might be kept in -- through
3 cookies?

4 A. Yes. Well, following that example, cookies
5 can have any kind of information, really. There's no
6 real restriction, but, you know, the common usage is
7 something like products or an identifier of a -- of an
8 individual.

9 For example, an identification of a shopping
10 cart and the contents, the products, the product IDs
11 that you've selected, whether you're going to -- whether
12 you've actually, you know, decided to buy them or -- or
13 they're just things that you're thinking about buying.

14 Q. Thank you.

15 Do you have an opinion about whether or not a
16 cookie has to contain explicit user-identifying
17 information like a name in order to provide a web server
18 with information that relates to identifying a user?

19 A. No, it -- it doesn't.

20 Q. Just to clarify my question, do you have an
21 opinion on that subject?

22 A. Yes, I do.

23 Q. Okay. And what is your opinion in connection
24 with that?

25 A. I think my opinion is that if you're providing

1 user-related information or something identifying a
2 user, it doesn't have to be a person's name. Very
3 typically, it's something like just an ID that uniquely
4 identifies an individual.

5 Q. Is there something called a session ID,
6 Dr. Alexander?

7 A. Yes. That's one -- one form of cookie
8 identifier.

9 Q. Could you please explain to the jury what a
10 session ID cookie is?

11 A. Well, in its broadest form, a session ID is
12 just to maintain a relationship with a server so that it
13 knows who you are when you come back.

14 For example, you may have typed in shopping
15 cart information, and it -- it wants -- you -- you -- if
16 you go away from the computer and come back, you need to
17 be sort of related to that information again. So
18 it's -- it's just an identifier.

19 Q. And is the session ID a name?

20 A. No, it's not. It's -- it's like a long --
21 typically, it's a long string of characters, random
22 characters or numbers.

23 Q. Thank you.

24 Is there such a thing as disabling cookies?

25 A. Yes.

1 Q. Would you please tell the jury what that is?

2 A. Yes. Well, the manufacturers of browsers
3 generally allow users to not accept cookies on their
4 computers. They -- they have a switch, and you can turn
5 it off, if you don't want to have cookies saved on your
6 computer.

7 Q. Do you have an opinion as to whether or not it
8 is common for computer users to disable all cookies?

9 A. Yes, I do.

10 Q. And what is your opinion?

11 A. Well, based on my own experience and own
12 knowledge and also based on some analysis I did, it's an
13 extremely small percentage of users who disable cookies.

14 Q. And did you review materials in your field to
15 determine whether or not your opinion was correct in
16 that regard?

17 A. Yes, I did.

18 Q. And what did you review?

19 A. There's a document that's --

20 Q. Well, actually, Dr. Alexander, can you
21 describe your recollection of the nature of what you
22 reviewed?

23 A. Oh, yes. The -- there was -- there's -- apart
24 from my own knowledge, there was one document in
25 particular that I looked at. It automated the

1 measurement of whether users had disabled cookies. In
2 other words, it did it in a machine-automated way.

3 And so it -- it examined a large population of
4 users. It was a very scientific study, particularly
5 since it addressed a large community of different users.
6 It was also scientific, I thought, because it -- it was
7 careful to take out false parameters.

8 For example, many times in these -- in these
9 examinations or these analysis exercises, there are
10 things called robots that are involved. They're like
11 client computers, and, you know, the idea was they are
12 not part of the study of whether humans turn off
13 cookies. So the study carefully removed a lot of
14 extraneous, irrelevant information.

15 Q. Thank you.

16 Let's turn our attention to DoubleClick.
17 We've heard testimony in the case from Mr. Bellack about
18 how DoubleClick works.

19 Did you rely on Mr. Bellack's testimony and
20 deposition in any way in connection with the work that
21 you did in this case?

22 A. Yes.

23 Q. Okay. And you indicated on the drawing
24 earlier the DoubleClick ad tag on the diagram. Can you
25 describe to the jury just generally what DoubleClick

1 does in connection with your diagram?

2 And you should stay seated for this.

3 A. Yes, certainly.

4 The -- I drew on the diagram a tag which would
5 be understood by people in this field as one kind of ad
6 tag. And it -- the -- the use of the DoubleClick system
7 follows that kind of approach, which is the publisher --
8 the website publisher puts this ad tag onto their HTML
9 document page. Just as I showed you in my diagram,
10 there's an HTML document.

11 So they paste it in, and the -- the ad tag,
12 when it's received by this client computer, the browser,
13 the browser recognizes it as requiring access to one of
14 the DoubleClick servers. That's why I wrote up the
15 ad.DoubleClick.net that says to the browser go to a
16 DoubleClick server and get ad -- ad-related display
17 information.

18 Q. And in relation to your description of how
19 DoubleClick works, can DoubleClick ad tags be used
20 communicating with the website server in connection with
21 that?

22 A. Could you repeat the question?

23 Q. Sure. Are DoubleClick ad tags used in
24 connection with displaying ads on websites as you've
25 described here?

1 A. Yes, yes, yes.

2 So to finish it off, you know, the ad tag
3 is -- is digested by the browser, and that results in an
4 ad being displayed on the browser in conjunction with
5 the content that came from the website.

6 Q. Thank you.

7 Let's turn our attention to the subject of
8 in-page ads. Dr. Alexander, would you describe for the
9 jury what an in-page ad is?

10 A. The -- the easiest way to think of an in-page
11 ad is that it's sort of a reserved section of space on
12 the page that's going to be displayed. And once the --
13 it's a block. In other words, usually a piece of real
14 estate in the page.

15 And once the browser sees the ad tag and gets
16 the ad information, it will plug that advertisement into
17 the -- into the slot that's reserved when -- when it
18 arrives.

19 Q. Is there such a thing called interstitial ads,
20 Dr. Alexander?

21 A. Yes indeed.

22 Q. Please discuss what that is.

23 A. Well, these are ads that typically differ from
24 the in-page ads. They -- they either appear before the
25 display of the content and -- or they are displayed over

1 the top of the content, like a pop-up ad.

2 Q. And can they cover some or all of the website?

3 A. Yes. They -- they -- in the case of a pop-up,
4 for example, they cover some of the -- the news or
5 graphics that are underneath on the webpage.

6 Q. Thank you.

7 Now, are the ad tags for in-page ads, when it
8 comes to DoubleClick, the same as the ad tags for
9 interstitial ads?

10 A. No, they're not -- not the same. There are
11 different parameters that distinguish ad tags from
12 interstitial ad tags.

13 Q. What do you mean by parameters?

14 A. Well, there's -- there's one that -- I think
15 it was the DCOPT parameter. These ad tags have a bunch
16 of different parameters that are tucked into the -- the
17 tag. And the DCOPT, I think it is, can be set to say
18 interstitial, IST.

19 Q. Thank you.

20 Now, let's turn our attention to the patents
21 in this case. Can you please identify to the jury which
22 patent claims you were considering as part of your work
23 in this case?

24 A. Yes. So for the '702 patent, there was just
25 Claim 53. The '943 patent, I considered the Claims 1,

1 49, and 67.

2 Q. And do you have a view as to whether or not
3 Claim 53 is generally representative of the three claims
4 of the '943 patent?

5 A. Yes, I do.

6 Q. And why is that?

7 A. Well, the -- the claims -- the Claim 53 of the
8 '702 patent describes essentially the -- the combining
9 of ad-related information with content-related
10 information. And then the display of the -- the ad at a
11 user's browser and the claims of the '943 patent follow
12 that same basic idea.

13 Q. Now, when you say the same, are you saying
14 that Claim 53 is identical to the other three claims of
15 the '943 patent?

16 A. No, no. The claims are different and
17 distinct, so there are some differences. Yes.

18 Q. Could you give the jury just a few examples of
19 some differences?

20 A. Certainly. The -- the most notable is --
21 particularly to people in -- involved with patents is --
22 the '702 patent is an apparatus claim. Claim 53 is an
23 apparatus claim. That just means it involves a system
24 of some kind.

25 The claims that are at issue here for the '943

1 patent are called method claims, which convey a number
2 of steps that have to be performed and not necessarily a
3 system.

4 Q. Thank you.

5 And can you give the jury a couple other
6 examples of differences between the claims?

7 A. Certainly. When you get down to the -- the
8 actual claim language, which is what defines the
9 invention, the -- the '702 patent, Claim 53, involves
10 something called first information, which is generally
11 being discussed in terms of cookies. And it -- it also
12 recites the use of storing user information on a website
13 server. Now, that's the '702 patent, Claim 53.

14 When you go look at the claims at issue for
15 the '943 patent, Claim 1 of the '943 patent doesn't
16 involve that first information. It doesn't involve
17 cookies.

18 And then all of the claims of the '943 patent
19 that are at issue, 1, 49, and 67, none of them require
20 the storage of information of user information on a
21 website server. And there is one other difference. The
22 -- the term concurrent is used in the '702 patent, Claim
23 53, and it's not used in the '943 patent claims.

24 Q. Thank you.

25 Now, I'd like to show you on the screen

1 Exhibits 29 and 30.

2 MS. ANDERSON: Just the first page,
3 please, Ben.

4 Q. (By Ms. Anderson) Exhibit 29 is before you,
5 Dr. Alexander. What is this?

6 A. Yes. That's the -- that's the '702 patent,
7 the face page of it.

8 Q. Thank you.

9 MS. ANDERSON: And can we have 30 up,
10 please, Ben?

11 Q. (By Ms. Anderson) What is Exhibit 30,
12 Dr. Alexander?

13 A. That is the '943 patent cover page.

14 Q. All right. Did you review these in connection
15 with your work in this case?

16 A. Yes, I did.

17 Q. All right. As part of the work that you did
18 in connection with this matter, did you ever describe
19 documents in which Beneficial discussed its view of how
20 claim limitations apply to websites doing advertising?

21 A. Documents in which Beneficial --

22 Q. Yes.

23 A. -- claim?

24 Q. Yes.

25 A. Yes, I did it. Certainly.

1 Q. All right. I'd like to show you Exhibits 8
2 and 9 in your binder. Do you recognize Exhibits 8 and
3 9, Dr. Alexander?

4 A. Yes, I do.

5 Q. And what are they?

6 A. They -- they are the documents that were
7 produced for the Court as part of the procedure of
8 patent litigation, and they represent the asserted
9 claims and infringement contentions that were written by
10 Beneficial.

11 Q. And what are infringement contentions again?

12 A. Quite simply, it's -- it's a -- it's
13 information about why the Plaintiff, which in this case
14 was Beneficial -- why they believe that certain accused
15 websites satisfy the claims.

16 Q. Thank you.

17 Did you make any assumptions concerning
18 Exhibits 8 and 9, the infringement contentions from
19 Beneficial?

20 A. Yes. I was -- I took the assumption that --
21 that those documents were accurate, complete, and
22 provided a full analysis of all -- of why Beneficial
23 believed the accused websites satisfied the patent
24 claims.

25 Q. All right. Let's take a look at Exhibit 9,

1 please. And we see here the front page of Exhibit 9.

2 Can you please tell the jury if there is a
3 portion of Exhibit 9 that goes through Beneficial's
4 discussion of the patent claims as applied to accused
5 products?

6 A. Are you talking about the -- the asserted
7 claims?

8 Q. Yes.

9 A. Right. So -- well, the first -- the first
10 portion of this document, which is 46 pages long, does
11 have information about the claims that are asserted, and
12 they are in the early pages, Page 2 and 3, I believe.

13 Q. Uh-huh. Thank you.

14 And is there an appendix to this document
15 that's a part of the document?

16 A. Yes. After -- after those first 46 pages,
17 there is an appendix which runs for some 180 pages, I
18 believe.

19 Q. All right. And what is this -- what is
20 contained in this appendix?

21 A. It has the claim elements and discussion of
22 the accused products.

23 Q. And where do we see the claim elements in
24 Appendix A?

25 A. You can see from the -- the slide that on the

1 left-hand side, there is a particular claim element, and
2 it's from one of the claims, Claim 53 of the '702
3 patent. And it says: An apparatus for a service on a
4 communications network comprising. So that's the early
5 part of the claim.

6 Q. And what generally is contained in the
7 right-hand column of Appendix A?

8 A. On the right-hand column, you see Beneficial's
9 discussion of why they think each of the websites that
10 were accused satisfies that particular claim element.

11 Q. Okay. And when you say that it contains the
12 discussion of why they think each of the websites
13 contain the claim element, who is the they you're
14 talking about?

15 A. Beneficial.

16 Q. All right. And do you have an understanding
17 in this document as to who wrote Exhibit 9, whose words
18 they are?

19 A. Well, my general understanding is that it
20 would have been the lawyers for Beneficial.

21 Q. All right. And so this is something that was
22 provided by Beneficial as part of the case. Is that --

23 A. Yes. This -- my understanding is this is a
24 document that's required by the Court and has to be
25 submitted to the Court as part of the proceedings for an

1 infringement lawsuit.

2 Q. All right. Now, this is quite a long document
3 as you just described.

4 Are you able to give the jury an overview of
5 what Beneficial is saying in here are the features of a
6 website that infringes, for example, Claim 53?

7 A. Yes. As -- as a general sort of summary of
8 what's -- what's in the Beneficial statements, the kind
9 of website that they believe would satisfy the claim --
10 this is Claim 53 -- would include websites that have the
11 ability to store user information at the website,
12 websites that communicate with web browsers using this
13 cookie information, and in particular, result in storing
14 of the cookie information on a client computer, the
15 browser, and then the use of that same cookie
16 information when a -- a person, a user, returns to the
17 website at a later time.

18 And then towards the end of the claim, you see
19 that websites that satisfy Beneficial's statements here
20 would be websites that combine ad-related information
21 with service-content information, service-related
22 information.

23 And the combined information would flow to the
24 -- the browser and result in this concurrent display of
25 advertising presentations and -- and the -- the

1 service-related content.

2 Q. Can Google's DoubleClick ad products be used
3 with websites that have that kind of functionality?

4 A. Certainly. You know, Google's DoubleClick
5 advertising products, they can be used with websites
6 that fit this set of parameters, and in particular, use
7 of cookies and displaying of advertising presentations,
8 display of advertisements that were the result of
9 combining at the website server, advertising-related
10 information with the service-related information.

11 Q. Thank you.

12 Dr. Alexander, what is user registration as
13 relates to websites?

14 A. User registration is -- is a step where you
15 normally provide information about yourself. And you
16 may have heard about Target, for example. If you were
17 to go to a website like Target and log in or register,
18 you would have to provide information about yourself,
19 maybe shipping address, maybe a billing address, perhaps
20 credit card information. So that's -- that's the step
21 of registration.

22 Q. Now, do you have an opinion about whether any
23 of the patent claims involved here require that user
24 information be stored at the website and come from a
25 user registration step?

1 A. Yes, I do.

2 Q. What is your opinion?

3 A. It does not. The claims do not require that.

4 Q. Now, Dr. Alexander, is there something called
5 authentication in relation to websites?

6 A. Yes.

7 Q. What is that?

8 A. Well, authentication is -- well, the meaning
9 of authentication is essentially verifying that
10 you've -- you are who you claim to be. So in terms of
11 websites, it's -- it's verifying the identity of a user
12 or a machine, for that matter, connecting to a website.

13 Q. Do any of the patent claims at issue here
14 require authentication of a user?

15 A. No.

16 Q. Now, you mentioned in your description of
17 Claim 53 earlier the concept of concurrent display.

18 Do you have an opinion about how a person of
19 skill in the field like yourself understands the term
20 concurrent as used in the patent claims?

21 A. Yes, I do.

22 Q. And what is your view?

23 A. Well, my understanding of concurrent as -- as
24 it's used in the claim is that it's -- it's the result
25 of the flow of information that is -- is a consequence

1 of a user going to a website and asking for a webpage.

2 It's -- it's all the pieces coming together at the
3 browser. That's how it's used in the claim language.

4 Q. Does it mean that they all have to come and
5 show up to the user at the identical point in time?

6 A. No. I -- that's not a requirement, in my
7 opinion.

8 Q. Now, let's turn our attention to the subject
9 of user-identifying information. Based on your
10 experience in the field, do you have an opinion about
11 whether a website host or content provider would need to
12 be encouraged in any way to try to gather more
13 information about its users and keep that information?

14 A. Yes, I do.

15 Q. What is your opinion in that regard?

16 MR. ROSEN: Objection, Your Honor.
17 Actually, can I have the question read back?

18 THE REPORTER: Sure.

19 THE COURT: You should have it there,
20 Counsel.

21 MR. ROSEN: Yeah, I do. Thank you.
22 I believe this is beyond the scope of the witness'
23 report.

24 THE COURT: Well, the witness is bound by
25 the scope of his report.

1 Ms. Anderson, do you have a response to
2 the objection?

3 MS. ANDERSON: I do, Your Honor. I
4 believe in Paragraph 129 of the report that is
5 addressed.

6 THE COURT: Do you maintain your
7 objection, Mr. Rosen?

8 MR. ROSEN: Your Honor, I'll withdraw the
9 objection.

10 THE COURT: All right. Well, let's move
11 along, and let's -- let's be as certain as possible
12 before we impose these kind of interruptions on the
13 process in the future.

14 Go forward, Counsel.

15 MS. ANDERSON: Thank you, Your Honor.

16 Q. (By Ms. Anderson) Dr. Alexander, do you have
17 an opinion about whether a website host or content
18 provider would need to be encouraged to try to gather
19 more information about users and keep that information?

20 A. Yes, I do.

21 Q. Please tell the jury what your opinion is.

22 A. Well, my opinion, which is based on my own
23 extensive experience with website development, is
24 website -- website owners. The publishers need no
25 encouragement to collect user information. They do it

1 all the time, and they have since the beginning of
2 websites in the early '90s.

3 Q. All right. And do you have a view about
4 whether or not the use and insertion of ad tags into
5 HTML documents is a commonly known practice in your
6 field?

7 A. Yes. It's -- it's a commonly known practice
8 and it's -- it's as simple as what I showed you. And
9 that is, writing a tag into an HT -- HTML document or a
10 piece of an HTML document. It's well-understood and
11 easy to do in terms of placing it in the page.

12 Q. Thank you.

13 MS. ANDERSON: Your Honor, I pass the
14 witness.

15 THE COURT: Cross-examination?

16 All right. Proceed when you're ready,
17 Mr. Rosen.

18 MR. ROSEN: Thank you very much, Your
19 Honor.

20 CROSS-EXAMINATION

21 BY MR. ROSEN:

22 Q. Good morning, Dr. Alexander.

23 A. Good morning.

24 Q. Now, you've been in Court for the entire
25 proceeding so far, correct?

1 A. Well, I came in at lunch -- after lunch
2 yesterday.

3 Q. Right. So you heard the opening statements
4 and the witnesses?

5 A. Yes.

6 Q. Okay. So you -- you understand that the issue
7 that the jury is going to decide here is -- is whether
8 the customer's use of DoubleClick constitutes indirect
9 infringement by Google but for the license, right?

10 A. No, I'm not sure I do.

11 Q. Well -- well, as a matter of fact, you -- you
12 showed up today with some charts, didn't you?

13 A. (No response.)

14 Q. You came to Court today holding some charts,
15 right?

16 A. No, I think you must be mistaken.

17 Q. The charts in the back, were you -- did you
18 not bring those?

19 A. No.

20 Q. All right. You've looked at the settlement
21 agreement in this case, right?

22 A. No, I don't think so.

23 Q. You've never seen the settlement agreement in
24 this case?

25 A. I think there were portions of it in the -- in

1 the Court presentation, but I've never seen the document
2 in front of me.

3 Q. Okay. So you've never even seen the document
4 that this jury is going to decide whether it was
5 breached, right?

6 A. That's correct, yes. I have not seen it.

7 Q. You understand -- you've -- you've testified
8 in trial, you said, 10 times?

9 A. At least 10.

10 Q. At least 10 times. On issues of infringement?

11 A. Yes.

12 Q. Sometimes you've testified that parties
13 infringe a patent, I take it? Is that fair to say?

14 A. Not yet. I may soon --

15 Q. Okay.

16 A. -- but not yet.

17 Q. Sometimes you testified that parties haven't
18 infringed a patent?

19 A. That's correct.

20 Q. Sometimes you've testified that a patent is
21 invalid?

22 A. Yes.

23 Q. Sometimes you've testified a patent is valid?

24 A. Again, not yet.

25 Q. Okay. And -- and whether it's in court or in

1 a deposition in a report, sometimes you offer opinions
2 on direct infringement, correct?

3 A. Yes.

4 Q. And sometimes you offer opinions on indirect
5 infringement, correct?

6 A. Yes, I have done that.

7 Q. And you understand that indirect infringement
8 can be contributory infringement or inducement, right?

9 A. Yes.

10 Q. And you prepared a report in this case,
11 correct?

12 A. Yes, I did.

13 Q. About a 60-page report or so?

14 A. That's correct.

15 Q. In your report, you do not offer any opinions
16 on infringement, correct?

17 A. That is correct.

18 Q. You do not offer any opinions on whether
19 Google indirectly infringes the patent by contributory
20 infringement, right?

21 A. That's correct, I did not offer such opinions.

22 Q. Right. And you didn't offer an opinion on
23 whether DoubleClick is a material part of the invention
24 for purposes of contributory infringement, right?

25 A. No, I don't believe so.

1 Q. Did you offer an opinion on whether
2 DoubleClick has non-infringing uses?

3 A. It was discussed, but I don't think it was in
4 the form of an opinion.

5 Q. Right. In other words, you -- you couldn't
6 have offered an opinion on non-infringing -- what is or
7 is not a non-infringing use, because to offer an opinion
8 on what is or is not a non-infringing use, first, you
9 have to have an opinion on infringement, right?

10 A. That's correct.

11 Q. And in your report, you do not offer any
12 opinions on whether Google indirectly infringes the
13 patents by inducement; isn't that accurate?

14 A. That's correct.

15 Q. You do not offer any opinions on whether
16 Google intended to cause its customers to infringe the
17 patent, right?

18 A. I -- I think I had some comments on that
19 subject, but I didn't form them as opinions, I don't
20 believe.

21 Q. Right. And the comments you had on that
22 subject is that Google encourages and instructs its
23 customers to use ad tags.

24 A. Yes, that's certainly true.

25 Q. Have you done reports or analyses for other

1 people on the issue of inducement?

2 A. Yes.

3 Q. So you know that for inducement, it's not
4 enough that Google intended its customers to use ad
5 tags; Google had to intend its customers to use ad tags
6 in a way that infringes the patents, right?

7 A. Yes, that's correct.

8 Q. You also understand that there cannot be
9 indirect infringement without some direct infringement
10 by somebody, right?

11 A. Yes, that's correct.

12 Q. In your report, you do not offer any opinions
13 on whether any of Google's customers directly infringe
14 the patent, correct?

15 A. That is correct.

16 Q. In fact, you have no knowledge of how any of
17 the -- of the Defendants, these underlying customers,
18 you don't know how any of their websites operate, do
19 you?

20 A. No. I -- I have not analyzed their websites.

21 Q. All right. And you were never even given
22 access to the documentation produced by these parties
23 that show how their websites operate, right?

24 A. That is correct.

25 Q. The things that I just talked about, opinions

1 on indirect infringement by Google and opinions on
2 direct infringement by Google's customers, those are
3 things that you are certainly capable of doing, right?

4 A. Yes, that's -- that's certainly true.

5 Q. And in this case, you were ready, willing, and
6 able to do those analyses if Google asked you to, right?

7 A. I was able, if asked, but I was not asked.

8 Q. Google did not ask you to do any infringement
9 analysis, right?

10 A. That is correct.

11 Q. Now, in preparing your opinions in this case,
12 you accepted as true Beneficial's infringement
13 contentions. Did I -- is that a fair way to
14 characterize it?

15 A. Yes, that was a starting point. I assumed
16 that they were correct and complete and true.

17 Q. And -- and so I don't want to oversimplify
18 this, but is this a correct characterization of what
19 you're saying: That you've accepted Beneficial's
20 infringement contentions as true, and if you accept
21 Beneficial's infringement contentions as true, then the
22 customers infringe?

23 A. No.

24 Q. Okay. That -- that's -- simply accepting as
25 true allegations doesn't make those allegations true,

1 right?

2 A. That's correct.

3 Q. Now, you've dealt with infringement
4 contentions in the past in other cases, right?

5 A. Yes.

6 Q. It's a document that you reviewed for other --
7 for other clients, correct?

8 A. Yes.

9 Q. And you understand that infringement
10 contentions is something that's prepared early on in the
11 case, right?

12 A. Yes, that's -- that's the normal practice.

13 Q. The -- the normal practice is they're prepared
14 before the -- the Plaintiff has received any of those
15 sort of confidential documents describing precisely how,
16 you know, in this case, the website operates, right?

17 A. It varies a little, I think, but that's
18 probably the typical case.

19 Q. Now, you identified some of the documents that
20 you reviewed in connection with your opinions. Let me
21 ask you about some of the documents that you did not
22 review in connection with your opinions.

23 When you were formulating your opinions in
24 this case, Google did not provide you with copies of the
25 discovery responses that Google's customers provided to

1 us in this case, right?

2 A. That is correct.

3 Q. So -- but you're aware those exist, right?

4 A. Generally, but I have no knowledge of the
5 details.

6 Q. Okay. So let me show you Exhibit 508.

7 MR. RAMBIN: Oh, I'm sorry I don't think
8 we distributed notebooks, and I apologize for that, Your
9 Honor. May I do that right now?

10 THE COURT: Yes.

11 MR. RAMBIN: May I approach, Your Honor?

12 THE COURT: You may.

13 All right. Let's proceed.

14 MR. RAMBIN: Thank you.

15 Q. (By Mr. Rosen) And I apologize for not having
16 given you that notebook first, Dr. Alexander, but if you
17 could look at Exhibit 508, Exhibit 508, these are Demand
18 Media's Supplemental Objections to Responses for
19 Beneficial Innovations.

20 Do you see that?

21 A. No. I'm a little confused. Is this the
22 same --

23 THE COURT: Doesn't appear you've
24 distributed everything you needed to, Counsel.

25 MR. RAMBIN: That is correct, Your Honor.

1 I distributed the wrong witness binder.

2 THE COURT: All right.

3 MR. RAMBIN: We have the correct one.

4 May I approach now?

5 THE COURT: Yes. Let's get this done
6 right. We're wasting time.

7 MR. ROSEN: I apologize, Your Honor.

8 Q. (By Mr. Rosen) Dr. Alexander, do you have
9 Exhibit 508?

10 A. Yes, I do.

11 Q. All right. So Exhibit 508, these are Demand
12 Media's Supplemental Responses to Interrogatories,
13 right?

14 A. Yes. I've never seen them, but --

15 Q. And these are the kinds of documents that you
16 would normally look at if you were doing a regular
17 infringement analysis, right?

18 A. They would be available, but I don't always
19 depend upon them.

20 Q. And in Exhibit 508, if you turn to the -- the
21 page that's down at the bottom that says 508-11.

22 A. Yes, I see that.

23 Q. You can see that -- that Demand Media was
24 asked this question, this interrogatory: If you dispute
25 that you infringe or have infringed any claim of the

1 '702 patent that is asserted against you, set forth in
2 specific detail the complete basis for your contention,
3 and then it goes on.

4 And then if you look beginning on Page 11,
5 Demand Media sets forth the reasons why it believes it
6 doesn't infringe the '702 patent, correct?

7 A. Yes, I see that.

8 Q. And I -- I'm going to just run through these.
9 If you look at Exhibit 509, 509 are Advance
10 Publications's Second Supplemental Discovery Responses,
11 right?

12 A. That -- that would appear to be the case, yes.

13 Q. Okay. And if you turn to Page -- what's --
14 what's marked on the bottom as 509-17, you can see the
15 exact same interrogatory is asked of -- of this party.

16 And then, again, without going through it,
17 this -- Advance Publications then provides all the
18 reasons why they assert that they are not infringing the
19 patent, right?

20 A. That's on Page 19, is it, the response?

21 Q. Yes, exactly.

22 A. All right. I see that.

23 Q. All right. And if we look at Exhibit 510,
24 this is ALM Media's Supplemental Responses to Common
25 Interrogatories.

1 And if we go to the page that's marked at the
2 bottom 510-10, you can see here we have the same
3 interrogatory asked, and beginning on the Page 510-12,
4 this is where ALM Media gives all of their reasons why
5 they claim not to infringe the '702 patent, correct?

6 A. That's apparently what -- what is set forth at
7 Page 12, yes.

8 Q. And Exhibit 511, same thing for American
9 Media. This is American Media's responses where
10 American Media sets forth its reasons why it does not
11 infringe the '702 patent, correct?

12 A. Yes.

13 Q. And then Exhibit 512, last one, Exhibit 512 is
14 Autotrader's Second Supplemental Responses to Discovery.
15 And on the page marked 512-17, this is where Autotrader
16 was asked to set forth why it believes it doesn't
17 infringe the patent, and Autotrader sets forth its
18 response as well, correct, beginning on Page 512-19?

19 A. Yes.

20 Q. And -- and none of these discovery responses
21 were -- you haven't seen them -- today is the first time
22 you were seeing these discovery responses, right?

23 A. I believe so.

24 Q. Now, you were in Court -- you heard
25 Mr. Trinh's testimony yesterday, right?

1 A. Yes.

2 Q. And you heard Mr. Trinh testify that even to
3 this day, Google does not believe that it directly or
4 indirectly infringes the '702 patent, right?

5 A. Yes, I heard that.

6 Q. You didn't take that into account in rendering
7 any of your opinions in this case, right?

8 A. That Google claims they do not infringe, no, I
9 didn't take that into account.

10 Q. You -- you -- in rendering your opinions, you
11 also didn't take into account the fact that Beneficial
12 had previously accused Google of infringement, right?

13 A. No, I didn't.

14 Q. Right. So -- so you didn't take into account
15 that in the last action -- a couple of years ago, you
16 didn't take into account that Beneficial accused Google
17 of infringement, and you didn't take into account the
18 fact that Google denied the infringement. Is that an
19 accurate characterization?

20 A. I think that's accurate.

21 Q. And the reason you didn't take into account
22 those two facts is because the case settled without any
23 resolution. And so the fact that Google was accusing --
24 that Beneficial was accusing and Google was denying, it
25 just sort of washes itself out, right?

1 A. Yes, that's apparently what happened.

2 Q. But I'm saying -- my point is that's why you
3 didn't take it into account. You didn't take into
4 account the fact that in the prior action, Google
5 accused -- Beneficial accused Google of infringement,
6 and Google denied infringement.

7 That wasn't an important fact to you, because
8 the case ultimately settled, there was no resolution,
9 and there's nothing to consider.

10 A. I'm not sure what the question was.

11 Q. I'm -- okay. What I'm trying to understand,
12 Dr. Alexander, is why you didn't take into account the
13 fact that Beneficial had previously accused Google of
14 infringement and Google had previously denied
15 infringement. So that's what the -- the sort of the
16 premise of my question is.

17 And -- and so what I'm asking you, isn't it
18 true the reason you didn't take into account those two
19 facts is because they essentially wash each other out
20 given that the case settled and there was never an
21 adjudication?

22 A. Well, not quite.

23 MR. ROSEN: Your Honor, I'd like to read
24 from the witness's deposition.

25 THE COURT: Let's make sure he's finished

1 his answer.

2 MR. ROSEN: My apologies.

3 THE COURT: Is that your answer,
4 Dr. Alexander?

5 A. Well, I -- I had understood that under the
6 license agreement, Google was authorized to use the
7 technology. So I didn't -- I didn't -- I didn't think
8 of it as a washout. That's all I'm saying.

9 MR. ROSEN: Your Honor, I'd like to read
10 from the witness' deposition, Page 27, Line 14 to 28.

11 THE COURT: All right. You may proceed
12 for impeachment purposes. Let's limit it to the
13 impeaching portion.

14 MR. ROSEN: Well, it's a short clip, and
15 I think it probably covers it all, Your Honor.

16 (Video playing.)

17 QUESTION: So is it fair to say that in
18 preparing Exhibit 360, you didn't take into account the
19 fact that Google had denied that it infringes the '702
20 patent either directly or indirectly?

21 ANSWER: That's -- that's a true
22 statement. I did not take into account the fact that
23 Google had denied infringement, and I did not take into
24 account the understanding I have that Beneficial
25 asserted that they did infringe.

1 So there were two parties, one claiming
2 infringement, the other claiming non-infringement, and a
3 settlement was reached, so I didn't -- there was nothing
4 to use.

5 (End of video clip.)

6 Q. (By Mr. Rosen) And, Dr. Alexander, isn't that
7 exactly the same as the current action?

8 In other words, Beneficial accused these
9 customers of infringement, these five customers; the
10 five customers denied infringement; the case settled;
11 there was no adjudication; so there's nothing to use?

12 Doesn't that same logic apply?

13 A. I don't know. I -- I don't know who settled
14 or if they've settled.

15 Q. Google also did not provide you with a copy of
16 its own discovery responses from the prior lawsuit,
17 right?

18 A. That's correct.

19 Q. Okay. So if you can look at Exhibit 549.

20 Now, Exhibit 549 are Google's responses to
21 interrogatories from the prior case. And you can see on
22 the page that's at the bottom -- got the number on the
23 bottom, 549-11, you can see that Google was asked a very
24 similar question that we saw for the other customers,
25 which is: Set forth in specific detail each fact,

1 opinion, argument, inference, and document that supports
2 your contention that you have not infringed any asserted
3 claim of the '702 patent.

4 Do you see that?

5 A. Yes.

6 Q. And then if you turn to the page label at the
7 bottom, 549-21, and this is the -- just the -- I'll just
8 tell you that this is the portion of the response where
9 Google is talking about YouTube, which is one of the
10 Defendants in this case. And this is the portion of the
11 response where Google is addressing this notion of the
12 one or more programmatic elements for combining.

13 Do you see that?

14 A. Yes. I see the highlighted section, if that's
15 what you're referring to.

16 Q. Right. And so Google's position in the
17 underlying litigation was Google does not include one or
18 more programmatic elements for combining
19 advertising-related information with service-related
20 information to obtain a resulting combination. And then
21 you can see it repeats the rest of the element.

22 And then below that, you can see that Google
23 says: YouTube primarily relies on DoubleClick, AFC and
24 AFV -- which are products we haven't talked about in
25 this case -- to provides the users with advertisements.

1 Ad tags' snippets are included in YouTube webpages.

2 So you understand that Google is explaining
3 this is the reason why it doesn't meet this programmatic
4 element limitation, right?

5 A. To be honest, I'm not sure what -- what is
6 being said here. I haven't seen this document before.

7 Q. Well, in any event, you did hear Mr. Trinh
8 testify yesterday that Google still believes that ad
9 tags do not meet this element of advertising-related
10 information, right?

11 A. No. I -- I don't think I have that conclusion
12 yet. I just need to have more detail.

13 Q. Okay. You're aware that Beneficial dismissed
14 its claim of infringement regarding the '943 patent,
15 right?

16 A. Yes, I had heard that.

17 Q. So it's your understanding that Beneficial is
18 no longer asserting that any of those five customers or
19 the Defendants that were sued in the underlying lawsuit
20 infringe the '943 patent, right?

21 A. I don't really know. Actually, I don't know
22 the details.

23 Q. But you continued to -- regardless of whether
24 you know the details, you understand the basic notion
25 that Beneficial dismissed its claims under the '943

1 patent, right?

2 A. No, I don't know that.

3 Q. Well, we talked about it in your deposition,
4 didn't we?

5 A. Well, I generally know that -- that something
6 like that happened, but I don't -- I don't have much
7 understanding of the entire scope.

8 Q. Okay. So you know generally something like
9 that happened, meaning that Beneficial dismissed the
10 '943 patent from the case?

11 A. Well, I don't know which case it was, but I
12 had heard that at least in some Defendants, they had
13 dismissed it. I -- I didn't know if it was ever
14 Defendant.

15 Q. But in any event, you continued to assume the
16 truth of Beneficial's infringement contentions regarding
17 the '943 patent, even though Beneficial doesn't even
18 assert those anymore?

19 A. Yes.

20 Q. Let me ask you a few questions about ad tags.
21 You -- you agree that the way the ad tags get into the
22 HTML file that you described is through a computer
23 program that assembles various components together,
24 right?

25 A. Could you repeat that, please?

1 Q. Yeah. The way the -- let me ask you -- how
2 does the ad tag get into the HTML file?

3 A. Well, the -- I've done it myself personally.
4 You can type it in. You can cut and paste, which is a
5 common approach. Google would give you the ad tag as a
6 sample, and you can just copy it and paste it into an
7 HTML document or a portion of a document. It's just
8 text.

9 Q. DoubleClick does not perform that combining
10 step, correct?

11 A. Oh, that -- that's correct. They -- but
12 you're talking about combining in terms of the patent
13 claim element?

14 Q. Correct.

15 A. Right.

16 Q. The programmatic elements for combining
17 advertising-related information and service-related
18 information, DoubleClick does not perform that combining
19 step?

20 A. All right. So I just want to restate, because
21 I thought you were talking about the mechanics of
22 inserting a tag into HTML. But the actual combining of
23 the ad tag with content, service-related content, is not
24 performed by DoubleClick.

25 Q. That's performed by the website?

1 A. That's correct.

2 Q. And DoubleClick also does not include this
3 software that's needed to perform that combining step,
4 correct?

5 A. Yes, that's correct.

6 Q. All right. Now, you're aware that there are
7 websites that do not set cookies on a user's device,
8 right?

9 A. It's pretty rare, but there have been some in
10 the past.

11 Q. Well, one class -- well, let me give you an
12 example. One class of websites that might not set
13 cookies are websites that are purely informational.

14 A. You'd have to give me some specifics, but it's
15 a possibility.

16 MR. ROSEN: Your Honor, I'd like to play
17 the witness' deposition Page 137, Line 17 through 24.

18 (Video clip playing.)

19 QUESTION: Are there websites that do not
20 use cookies?

21 ANSWER: Well, as I pointed out, you
22 don't -- the use of cookies is determined by the server
23 itself in the set cookie command. So there are
24 certainly websites that don't set cookies and have no
25 need to. I can't name any, but informational sites

1 would be the -- in that class.

2 (End of video clip.)

3 Q. (By Mr. Rosen) And, Dr. -- Dr. Alexander, you
4 have not been asked to form any opinions into this case
5 as to whether web -- websites that serve ads that do not
6 set cookies is a substantial non-infringing use,
7 correct?

8 A. No, I don't believe I have.

9 Q. And there are websites that do not store data
10 that is used to identify a user, right?

11 A. That's certainly true.

12 Q. And you have not been asked to offer any
13 opinions on whether ads served on websites that do not
14 store data that's used to identify a user is a
15 substantial non-infringing use, correct?

16 A. No, I did not provide such an opinion.

17 Q. You're aware that DoubleClick could be used to
18 serve ads on websites that use cookies but where users
19 have disabled the cookies, right?

20 A. Yes.

21 Q. And you are offering opinions in this case as
22 to whether that is a substantial use, correct?

23 A. Yes, that was discussed in my report.

24 Q. And in reaching your opinion, that users
25 disabling cookies is not common or substantial, you

1 relied on an article that came off the Internet, right?

2 A. Yes.

3 Q. Okay. If you remember in your direct
4 examination, you tried to look at the document in your
5 book and -- and Ms. Anderson just said, no, just
6 describe the document for us.

7 Do you remember that exchange?

8 A. Yes, I do.

9 Q. Okay. Let's actually take a look at the
10 document, Exhibit 563. Exhibit 563 is that Internet
11 article that you were talking about, right?

12 A. Yes.

13 Q. You didn't find this article by yourself, did
14 you?

15 A. No.

16 Q. You did not discover this article while you
17 were performing a study on the number of users that
18 disable cookies?

19 A. That's correct.

20 Q. In fact, you never did perform a study to
21 determine the number of users that disable cookies, did
22 you?

23 A. That's correct.

24 Q. Google's lawyers gave you this article,
25 correct?

1 A. Yeah -- yes, I believe it was part of a
2 deposition exhibit.

3 Q. So your opinion about the number of users that
4 disable cookies is based on an article that Google's
5 lawyers gave you to look at, right?

6 A. Yes, that and my own general knowledge.

7 Q. You are certainly capable of performing a
8 study to determine the number of users that disable
9 cookies, aren't you?

10 A. Yes, I think so.

11 Q. It's within your skill set.

12 A. Yes.

13 Q. But you weren't asked by Google to perform
14 your own study of the numbers of users that disable
15 cookies, were you?

16 A. No.

17 Q. In fact, you never even asked Google whether
18 they have ever performed a study of the number of users
19 that have disabled cookies, did you?

20 A. No, I don't think so.

21 Q. Even to this day, you don't even know if
22 Google themselves have performed a study to determine
23 the number of users that disable cookies. Is that fair
24 to say?

25 A. That's correct.

1 Q. And the article that Google's lawyers gave you
2 to look at is an article from smorgasbork.com.

3 A. Yes.

4 Q. Before Google gave you this article, you never
5 visited the website smorgasbork.com, have you?

6 A. That's correct.

7 Q. You'd never even heard of smorgasbork.com, had
8 you?

9 A. Correct.

10 Q. As far as you're aware, at least at the time
11 you rendered your opinions, smorgasbork.com was not a
12 website known among computer scientists to be a reliable
13 source for data, correct?

14 A. I think that's correct.

15 Q. And what this -- what this smorgasbork.com
16 website did to run this study was they ran the test on
17 users that visited the smorgasbork.com website during an
18 hour-long period on a Saturday, right?

19 A. Yes.

20 Q. So, in other words, they were able -- for
21 every user that went on to smorgasbork.com between this
22 one-hour period on a Saturday, they were somehow able to
23 look at that user and see if that user had cookies
24 enabled, right?

25 A. Yes. Yes. They did various kinds of tests.

1 Q. Okay. And when you factor out the -- the
2 robots and all this other stuff, they got a sample of
3 about 13,000 users, right?

4 A. Yes.

5 Q. And I think you said you thought that was a
6 large sampling; was that right? Am I mischaracterizing
7 your testimony?

8 A. I think it's statistically significant based
9 on my knowledge of statistics.

10 Q. How many people do you think visit Google.com
11 in an hour?

12 A. I'd be guessing.

13 Q. Do you have an educated guess that you think
14 you can give the jury about how many users you think
15 visit Google.com in an hour?

16 A. No. I -- I don't have any statistics, I'm
17 afraid.

18 Q. More than 10 million?

19 A. I don't know.

20 Q. Would you agree that if Google has conducted a
21 test on the number of users that disable cookies, that
22 they'd have a much bigger population to judge it on?

23 A. Yes, that's a fair statement.

24 Q. By the way, the article this -- this -- this
25 Internet article, there's not even an author, is there?

1 A. I think you're correct.

2 Q. We don't even know who wrote this thing,
3 right?

4 A. Correct.

5 Q. We don't know what that person's credentials
6 were, right?

7 A. That's correct.

8 Q. Now, in rendering your opinions about whether
9 users disabling cookies is substantial, if I were to
10 give you a choice, Dr. Alexander, if I were to say, in
11 rendering your opinions, you can rely on a study
12 conducted by Google.com of the number of users that
13 visit Google.com disabling cookies or you can rely on a
14 study conducted by smorgasbork.com, you would have
15 chosen the smorgasbork.com study, right?

16 A. No. I think if -- if I'd had access to other
17 statistics, I would have used them.

18 Q. Well, when I took your deposition and I asked
19 you that question, what you told me is you would rather
20 use the smorgasbork.com article because you need to
21 distance yourselves -- yourself from the parties in this
22 lawsuit, right?

23 A. Yes, I think I did say that.

24 Q. So you would have rather used the
25 smorgasbork.com article because you wanted to distance

1 yourself from studies that might come from the client.

2 That's what you told me in deposition, right?

3 A. Yes.

4 Q. But the very study you relied on, the
5 smorgasbork.com study, that came from your client. That
6 was given to you by Google, right?

7 A. It was. I don't know what the origin of it
8 was, though.

9 Q. And when you rendered your opinion based on
10 the smorgasbork.com article that not a lot of users
11 disable cookies, you didn't even take the time to go on
12 the Internet and see if you could find other articles
13 that talked about the number of users that disable
14 cookies, did you?

15 A. I think I focused on that one.

16 Q. That one meaning the one that Google gave you?

17 A. Yes.

18 MR. ROSEN: Nothing further. I pass the
19 witness.

20 THE COURT: Redirect?

21 MS. ANDERSON: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. ANDERSON:

24 Q. Hello, Dr. Alexander.

25 Very briefly, you were asked some questions

1 about the article that you used in support of your
2 opinion concerning the disabling of cookies. Do you
3 have that line of questioning in mind?

4 A. Yes.

5 Q. All right. Did you rely solely on the article
6 that you were shown, Exhibit 55 -- 563 for your opinion?

7 A. No.

8 Q. Would you please explain to the jury what else
9 you relied on for your opinion that it is rare that
10 users disable all cookies?

11 A. I relied on my own experience. I've run
12 several high-volume websites and basically dealt with a
13 lot of people who have a need to understand the use of
14 cookies on those websites. So I based it on my own
15 personal experience.

16 Q. Did you have a view as to whether or not it
17 was reasonable for you to consult with Exhibit 563 and
18 rely upon it as part of your -- the basis for your
19 opinion?

20 A. I'm sorry. Could you repeat that?

21 Q. Sure. Do you have a view as to whether it was
22 reasonable for you to consider and rely on Exhibit 563,
23 the article, as part of the basis for your opinion at --
24 that it is rare that users disable all cookies?

25 A. Yes. I think it's a scientific study, so I

1 did rely on it.

2 Q. And can you explain to the jury why you
3 believe that?

4 A. Well, I touched on it earlier. The fact is
5 it's a good size sample. It was performed with computer
6 code to automatically register the -- the
7 characteristics of browsers, and it was scientific in
8 the sense of taking out irrelevant information.

9 Q. All right. Thank you.

10 Turning your attention to an earlier line of
11 questioning, you had been asked whether or not you had
12 taken into account as part of your opinion a variety of
13 materials from prior actions on the subject of whether
14 or not Google infringes.

15 Do you remember those lines of questioning?

16 A. Yes, I do.

17 Q. All right. Were you asked to give an opinion
18 of infringement in connection with this case?

19 A. No.

20 Q. All right. Had you been asked to do so, are
21 those materials you would have looked to?

22 A. I may have, yes.

23 Q. All right. Were you asked to make any
24 assumptions in connection with your opinion that relate
25 to why you didn't look to additional materials?

1 A. Well, I was asked to take the assumption that
2 the Beneficial infringement contentions were complete
3 and detailed and truthful.

4 | Q. All right. Thank you.

5 MS. ANDERSON: Your Honor, I pass the
6 witness.

7 THE COURT: All right. Additional
8 cross-examination?

9 MR. ROSEN: Nothing further, Your Honor.

10 THE COURT: Okay. You may step down, Dr.
11 Alexander.

12 All right. Plaintiff, call your next
13 witness.

14 MS. ANDERSON: Your Honor, at this point,
15 Plaintiff, Google, rests its case-in-chief.

16 THE COURT: All right. Ladies and
17 Gentlemen, this is a good place for us to break for
18 lunch. I'm going to excuse you for lunch.

19 I'd like you back in the jury room
20 assembled and ready to go about five minutes until 1:00,
21 and we'll attempt to start at 1:00 o'clock. That will
22 give you an hour and 15 minutes for lunch.

23 Please take your juror notebooks and
24 leave them on the jury table when you leave for lunch.

25 | As you expect me to say, don't discuss

1 the case among yourselves or with anyone else. Have a
2 good lunch, and we'll see you back here ready to go at
3 1:00 o'clock. You're excused at this time.

4 COURT SECURITY OFFICER: All rise.

5 (Jury out.)

6 THE COURT: All right. Be seated,
7 please.

8 Counsel, the Plaintiff having rested, to
9 address the possibility that the Defendant may have a
10 motion to offer under Rule 50, I want to make it clear
11 that it's my practice, which I believe is well within
12 the timeliness requirements of the rule, to wait until
13 all the evidence has been presented, the Plaintiff has
14 either presented their rebuttal case or closed their
15 rebuttal case or failed to call a rebuttal case, and
16 then hear competing Rule 50 motions from both parties at
17 the same time.

18 Clearly, that's before the case is
19 submitted to the jury and is completely timely based on
20 my reading of the rule.

21 If anyone has a problem with now -- with
22 that, speak now or forever hold your peace.

23 MR. ADAMS: And, Your Honor, for the
24 Defendants, I understand that that's the Court's
25 practice. Just for the record, I want to let the Court

1 know that we do intend to bring the motions, and we're
2 prepared to argue those motions now, but I understand
3 it's the Court's practice, so we will reserve our rights
4 and argue them at the time the -- the Court wants us to.

5 THE COURT: All right. Duly noted.

6 All right. Unless there's something
7 else, we stand in recess for lunch.

8 COURT SECURITY OFFICER: All rise.

9 (Lunch recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SHELLY HOLMES, CSR
Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/14

____1/22/14_____
Date

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date 12/31/14

____1/22/14_____
Date